

**Calendar No. 311**

106TH CONGRESS  
1ST SESSION

**S. 1712**

**[Report No. 106-180]**

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**A BILL**

To provide authority to control exports, and for  
other purposes.

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OCTOBER 8, 1999

Read twice and placed on the calendar

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1ST SESSION**S. 1712****[Report No. 106–180]**

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 1999

Mr. GRAMM, from the Committee on Banking, Housing, and Urban Affairs,  
reported the following original bill; which was read twice and placed on  
the calendar

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**A BILL**

To provide authority to control exports, and for other  
purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Export Administration Act of 1999”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

## TITLE I—GENERAL AUTHORITY

- Sec. 101. Commerce Control List.
- Sec. 102. Delegation of authority.
- Sec. 103. Public information; consultation requirements.
- Sec. 104. Right of export.
- Sec. 105. Export control advisory committees.
- Sec. 106. Prohibition on charging fees.

## TITLE II—NATIONAL SECURITY EXPORT CONTROLS

## Subtitle A—Authority and Procedures

- Sec. 201. Authority for national security export controls.
- Sec. 202. National Security Control List.
- Sec. 203. Country tiers.
- Sec. 204. Incorporated parts and components.
- Sec. 205. Petition process for modifying export status.

## Subtitle B—Foreign Availability and Mass-Market Status

- Sec. 211. Determination of foreign availability and mass-market status.
- Sec. 212. Presidential set-aside of foreign availability determination.
- Sec. 213. Presidential set-aside of mass-market status determination.
- Sec. 214. Office of Technology Evaluation.

## TITLE III—FOREIGN POLICY EXPORT CONTROLS

- Sec. 301. Authority for foreign policy export controls.
- Sec. 302. Procedures for imposing controls.
- Sec. 303. Criteria for foreign policy export controls.
- Sec. 304. Presidential report before imposition of control.
- Sec. 305. Imposition of controls.
- Sec. 306. Deferral authority.
- Sec. 307. Review, renewal, and termination.
- Sec. 308. Termination of controls under this title.
- Sec. 309. Compliance with international obligations.
- Sec. 310. Designation of countries supporting international terrorism.

TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES,  
MEDICINE, AND MEDICAL SUPPLIES

- Sec. 401. Exemption for agricultural commodities, medicine, and medical supplies.
- Sec. 402. Termination of export controls required by law.
- Sec. 403. Exclusions.

TITLE V—PROCEDURES FOR EXPORT LICENSES AND  
INTERAGENCY DISPUTE RESOLUTION

- Sec. 501. Export license procedures.
- Sec. 502. Interagency dispute resolution process.

TITLE VI—INTERNATIONAL ARRANGEMENTS; FOREIGN  
BOYCOTTS; SANCTIONS; AND ENFORCEMENT

- Sec. 601. International arrangements.
- Sec. 602. Foreign boycotts.

Sec. 603. Penalties.  
 Sec. 604. Multilateral export control regime violation sanctions.  
 Sec. 605. Missile proliferation control violations.  
 Sec. 606. Chemical and biological weapons proliferation sanctions.  
 Sec. 607. Enforcement.  
 Sec. 608. Administrative procedure.

#### TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 701. Export control authority and regulations.  
 Sec. 702. Confidentiality of information.

#### TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Annual and periodic reports.  
 Sec. 802. Technical and conforming amendments.  
 Sec. 803. Savings provisions.

### 1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFILIATE.**—The term “affiliate” includes  
 4 both governmental entities and commercial entities  
 5 that are controlled in fact by the government of a  
 6 country.

7 (2) **AGRICULTURE COMMODITY.**—The term “ag-  
 8 riculture commodity” means any agricultural com-  
 9 modity, food, fiber, or livestock (including livestock,  
 10 as defined in section 602(2) of the Emergency Live-  
 11 stock Feed Assistance Act of 1988 (title VI of the  
 12 Agricultural Act of 1949 (7 U.S.C. 1471(2))), and  
 13 including insects), and any product thereof.

14 (3) **CONTROL OR CONTROLLED.**—The terms  
 15 “control” and “controlled” mean any requirement,  
 16 condition, authorization, or prohibition on the export  
 17 or reexport of an item.

1           (4) CONTROL LIST.—The term “Control List”  
2 means the Commerce Control List established under  
3 section 101.

4           (5) CONTROLLED COUNTRY.—The term “con-  
5 trolled country” means a country with respect to  
6 which exports are controlled under section 201 or  
7 301.

8           (6) CONTROLLED ITEM.—The term “controlled  
9 item” means an item the export of which is con-  
10 trolled under this Act.

11          (7) COUNTRY.—The term “country” means a  
12 sovereign country or an autonomous customs terri-  
13 tory.

14          (8) COUNTRY SUPPORTING INTERNATIONAL  
15 TERRORISM.—The term “country supporting inter-  
16 national terrorism” means a country designated by  
17 the Secretary of State pursuant to section 310.

18          (9) DEPARTMENT.—The term “Department”  
19 means the Department of Commerce.

20          (10) EXPORT.—

21               (A) The term “export” means—

22                       (i) an actual shipment, transfer, or  
23 transmission of an item out of the United  
24 States;

1 (ii) a transfer to any person of an  
2 item either within the United States or  
3 outside of the United States with the  
4 knowledge or intent that the item will be  
5 shipped, transferred, or transmitted to an  
6 unauthorized recipient outside the United  
7 States; and

8 (iii) a transfer of an item in the  
9 United States to an embassy or affiliate of  
10 a country, which shall be considered an ex-  
11 port to that country.

12 (B) The term includes a reexport.

13 (11) FOREIGN AVAILABILITY STATUS.—The  
14 term “foreign availability status” means the status  
15 described in section 211(d)(1).

16 (12) FOREIGN PERSON.—The term “foreign  
17 person” means—

18 (A) an individual who is not—

19 (i) a United States citizen;

20 (ii) an alien lawfully admitted for per-  
21 manent residence to the United States; or

22 (iii) a protected individual as defined  
23 in section 274B(a)(3) of the Immigration  
24 and Nationality Act. (8 U.S.C.  
25 1324b(a)(3));

(B) any corporation, partnership, business association, society, trust, organization, or other nongovernmental entity created or organized under the laws of a foreign country or that has its principal place of business outside the United States; and

(C) any governmental entity of a foreign country.

(13) ITEM.—

(A) IN GENERAL.—The term “item” means any good, service, or technology.

(B) OTHER DEFINITIONS.—In this paragraph:

(i) GOOD.—The term “good” means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, including source code, and excluding technical data.

(ii) TECHNOLOGY.—The term “technology” means specific information that is necessary for the development, production, or use of an item, and takes the form of technical data or technical assistance.

1 (iii) SERVICE.—The term “service”  
2 means any act of assistance, help or aid.

3 (14) MASS-MARKET STATUS.—The term “mass-  
4 market status” means the status described in section  
5 211(d)(2).

6 (15) MULTILATERAL EXPORT CONTROL RE-  
7 GIME.—The term “multilateral export control re-  
8 gime” means an international agreement or arrange-  
9 ment among two or more countries, including the  
10 United States, a purpose of which is to coordinate  
11 national export control policies of its members re-  
12 garding certain items. The term includes regimes  
13 such as the Australia Group, the Wassenaar Ar-  
14 rangement, the Missile Technology Control Regime  
15 (MTCR), and the Nuclear Suppliers’ Group Dual  
16 Use Arrangement.

17 (16) NATIONAL SECURITY CONTROL LIST.—The  
18 term “National Security Control List” means the  
19 list established under section 202(a).

20 (17) PERSON.—The term “person” includes—  
21 (A) any individual, or partnership, corpora-  
22 tion, business association, society, trust, organi-  
23 zation, or any other group created or organized  
24 under the laws of a country; and

1 (B) any government, or any governmental  
2 entity.

3 (18) REEXPORT.—The term “reexport” means  
4 the shipment, transfer, transshipment, or diversion  
5 of items from one foreign country to another.

6 (19) SECRETARY.—The term “Secretary”  
7 means the Secretary of Commerce.

8 (20) UNITED STATES.—The term “United  
9 States” means the States of the United States, the  
10 District of Columbia, and any commonwealth, terri-  
11 tory, dependency, or possession of the United States,  
12 and includes the outer Continental Shelf, as defined  
13 in section 2(a) of the Outer Continental Shelf Lands  
14 Act (42 U.S.C. 1331(a)).

15 (21) UNITED STATES PERSON.—The term  
16 “United States person” means—

17 (A) any United States citizen, resident, or  
18 national (other than an individual resident out-  
19 side the United States who is employed by a  
20 person other than a United States person);

21 (B) any domestic concern (including any  
22 permanent domestic establishment of any for-  
23 eign concern); and

24 (C) any foreign subsidiary or affiliate (in-  
25 cluding any permanent foreign establishment)

1 of any domestic concern which is controlled in  
2 fact by such domestic concern, as determined  
3 under regulations prescribed by the President.

## 4 **TITLE I—GENERAL AUTHORITY**

### 5 **SEC. 101. COMMERCE CONTROL LIST.**

6 (a) IN GENERAL.—Under such conditions as the Sec-  
7 retary may impose, consistent with the provisions of this  
8 Act, the Secretary—

9 (1) shall establish and maintain a Commerce  
10 Control List (in this Act referred to as the “Control  
11 List”) consisting of items the export of which are  
12 subject to licensing or other authorization or re-  
13 quirement; and

14 (2) may require any type of license, or other  
15 authorization, including recordkeeping and report-  
16 ing, appropriate to the effective and efficient imple-  
17 mentation of this Act with respect to the export of  
18 an item on the Control List.

19 (b) TYPES OF LICENSE OR OTHER AUTHORIZA-  
20 TION.—The types of license or other authorization re-  
21 ferred to in subsection (a)(2) include the following:

22 (1) SPECIFIC EXPORTS.—A license that author-  
23 izes a specific export.

1           (2) MULTIPLE EXPORTS.—A license that au-  
2           thorizes multiple exports in lieu of a license for each  
3           such export.

4           (3) NOTIFICATION IN LIEU OF LICENSE.— A  
5           notification in lieu of a license that authorizes a spe-  
6           cific export or multiple exports subject to the condi-  
7           tion that the exporter file with the Department ad-  
8           vance notification of the intent to export in accord-  
9           ance with regulations prescribed by the Secretary.

10          (4) LICENSE EXCEPTION.—Authority to export  
11          an item on the Control List without prior license or  
12          notification in lieu of a license.

13          (c) AFTER-MARKET SERVICE AND REPLACEMENT  
14          PARTS.—A license or other authorization to export an  
15          item under this Act shall not be required for an exporter  
16          to provide after-market service or replacement parts, to  
17          replace on a one-for-one basis parts that were in an item  
18          that was lawfully exported from the United States,  
19          unless—

20                (1) the Secretary determines that such license  
21                or other authorization is required to export such  
22                parts; or

23                (2) the after-market service or replacement  
24                parts materially enhance the capability of an item  
25                which was the basis for the item being controlled.

1 (d) INCIDENTAL TECHNOLOGY.—A license or other  
2 authorization to export an item under this Act includes  
3 authorization to export technology related to the item, if  
4 the level of the technology does not exceed the minimum  
5 necessary to install, repair, maintain, inspect, operate, or  
6 use the item.

7 (e) REGULATIONS.—The Secretary may prescribe  
8 such regulations as are necessary to carry out the provi-  
9 sions of this Act.

10 **SEC. 102. DELEGATION OF AUTHORITY.**

11 (a) IN GENERAL.—Except as provided in subsection  
12 (b) and subject to the provisions of this Act, the President  
13 may delegate the power, authority, and discretion con-  
14 ferred upon the President by this Act to such depart-  
15 ments, agencies, and officials of the Government as the  
16 President considers appropriate.

17 (b) EXCEPTIONS.—

18 (1) DELEGATION TO APPOINTEES CONFIRMED  
19 BY SENATE.—No authority delegated to the Presi-  
20 dent under this Act may be delegated by the Presi-  
21 dent to, or exercised by, any official of any depart-  
22 ment or agency the head of which is not appointed  
23 by the President, by and with the advice and consent  
24 of the Senate.

1           (2) OTHER LIMITATIONS.—The President may  
2       not delegate or transfer the President’s power, au-  
3       thority, or discretion to overrule or modify any rec-  
4       ommendation or decision made by the Secretary, the  
5       Secretary of Defense, or the Secretary of State  
6       under this Act.

7   **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**  
8                           **MENTS.**

9       (a) PUBLIC INFORMATION.—The Secretary shall  
10   keep the public fully informed of changes in export control  
11   policy and procedures instituted in conformity with this  
12   Act.

13       (b) CONSULTATION WITH PERSONS AFFECTED.—  
14   The Secretary shall consult regularly with representatives  
15   of a broad spectrum of enterprises, labor organizations,  
16   and citizens interested in or affected by export controls  
17   in order to obtain their views on United States export con-  
18   trol policy and the foreign availability or mass-market sta-  
19   tus of controlled items.

20   **SEC. 104. RIGHT OF EXPORT.**

21       No license or other authorization to export may be  
22   required under this Act, or under regulations issued under  
23   this Act, except to carry out the provisions of this Act.

1 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

2 (a) APPOINTMENT.—Upon the Secretary’s own initia-  
3 tive or upon the written request of representatives of a  
4 substantial segment of any industry which produces any  
5 items subject to export controls under this Act or under  
6 the International Emergency Economic Powers Act, or  
7 being considered for such controls, the Secretary may ap-  
8 point export control advisory committees with respect to  
9 any such items. Each such committee shall consist of rep-  
10 resentatives of United States industry and Government,  
11 including the Department of Commerce and other appro-  
12 priate departments and agencies of the Government. The  
13 Secretary shall permit the widest possible participation by  
14 the business community on the export control advisory  
15 committees.

16 (b) FUNCTIONS.—

17 (1) IN GENERAL.—Export control advisory  
18 committees appointed under subsection (a) shall ad-  
19 vise and assist the Secretary, and any other depart-  
20 ment, agency, or official of the Government carrying  
21 out functions under this Act, on actions (including  
22 all aspects of controls imposed or proposed) designed  
23 to carry out the provisions of this Act concerning the  
24 items with respect to which such export control advi-  
25 sory committees were appointed.

1           (2) OTHER CONSULTATIONS.—Nothing in para-  
2       graph (1) shall prevent the United States Govern-  
3       ment from consulting, at any time, with any person  
4       representing an industry or the general public, re-  
5       gardless of whether such person is a member of an  
6       export control advisory committee. Members of the  
7       public shall be given a reasonable opportunity, pur-  
8       suant to regulations prescribed by the Secretary, to  
9       present evidence to such committees.

10       (c) REIMBURSEMENT OF EXPENSES.—Upon the re-  
11      quest of any member of any export control advisory com-  
12      mittee appointed under subsection (a), the Secretary may,  
13      if the Secretary determines it to be appropriate, reimburse  
14      such member for travel, subsistence, and other necessary  
15      expenses incurred by such member in connection with the  
16      duties of such member.

17       (d) CHAIRPERSON.—Each export control advisory  
18      committee appointed under subsection (a) shall elect a  
19      chairperson, and shall meet at least every 3 months at  
20      the call of the chairperson, unless the chairperson deter-  
21      mines, in consultation with the other members of the com-  
22      mittee, that such a meeting is not necessary to achieve  
23      the purposes of this section. Each such committee shall  
24      be terminated after a period of 2 years, unless extended  
25      by the Secretary for additional periods of 2 years each.

1 The Secretary shall consult with each such committee on  
2 such termination or extension of that committee.

3 (e) ACCESS TO INFORMATION.—To facilitate the  
4 work of the export control advisory committees appointed  
5 under subsection (a), the Secretary, in conjunction with  
6 other departments and agencies participating in the ad-  
7 ministration of this Act, shall disclose to each such com-  
8 mittee adequate information, consistent with national se-  
9 curity, pertaining to the reasons for the export controls  
10 which are in effect or contemplated for the items or poli-  
11 cies for which that committee furnishes advice. Informa-  
12 tion provided by the export control advisory committees  
13 shall not be subject to disclosure under section 552 of title  
14 5, United States Code, and such information shall not be  
15 published or disclosed unless the Secretary determines  
16 that the withholding thereof is contrary to the national  
17 interest.

18 **SEC. 106. PROHIBITION ON CHARGING FEES.**

19 No fee may be charged in connection with the submis-  
20 sion or processing of an application for an export license  
21 under this Act.

**TITLE II—NATIONAL SECURITY**  
**EXPORT CONTROLS**  
**Subtitle A—Authority and**  
**Procedures**

**SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**  
**CONTROLS.**

(a) AUTHORITY.—

(1) IN GENERAL.—In order to carry out the purposes set forth in subsection (b), the President may, in accordance with the provisions of this Act, prohibit, curtail, or require a license, or other authorization for the export of any item subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The President may also require record-keeping and reporting with respect to the export of such item.

(2) EXERCISE OF AUTHORITY.—The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, the intelligence agencies, and such other departments and agencies as the Secretary considers appropriate.

(b) PURPOSES.—The purposes of national security export controls are the following:

1           (1) To restrict the export of items that would  
2           contribute to the military potential of countries so as  
3           to prove detrimental to the national security of the  
4           United States or its allies.

5           (2) To stem the proliferation of weapons of  
6           mass destruction, and the means to deliver them,  
7           and other significant military capabilities by—

8                   (A) leading international efforts to control  
9                   the proliferation of chemical and biological  
10                  weapons, nuclear explosive devices, missile deliv-  
11                  ery systems, key-enabling technologies, and  
12                  other significant military capabilities;

13                  (B) controlling involvement of United  
14                  States persons in, and contributions by United  
15                  States persons to, foreign programs intended to  
16                  develop weapons of mass destruction, missiles,  
17                  and other significant military capabilities, and  
18                  the means to design, test, develop, produce,  
19                  stockpile, or use them; and

20                  (C) implementing international treaties or  
21                  other agreements or arrangements concerning  
22                  controls on exports of designated items, reports  
23                  on the production, processing, consumption,  
24                  and exports and imports of such items, and  
25                  compliance with verification programs.

1           (3) To deter acts of international terrorism.

2           (c) END USE AND END USER CONTROLS.—Notwith-  
3 standing any other provision of this title, controls may be  
4 imposed, based on the end use or end user, on the export  
5 of any item, that could materially contribute to the pro-  
6 liferation of weapons of mass destruction or the means  
7 to deliver them.

8 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

9           (a) ESTABLISHMENT OF LIST.—

10           (1) ESTABLISHMENT.—The Secretary shall es-  
11 tablish and maintain a National Security Control  
12 List as part of the Control List.

13           (2) CONTENTS.—The National Security Control  
14 List shall be composed of a list of items the export  
15 of which is controlled for national security purposes  
16 under this title.

17           (3) IDENTIFICATION OF ITEMS FOR NATIONAL  
18 SECURITY CONTROL LIST.—The Secretary, with the  
19 concurrence of the Secretary of Defense and in con-  
20 sultation with the head of any other department or  
21 agency of the United States that the Secretary con-  
22 sider appropriate, shall identify the items to be in-  
23 cluded on the National Security Control List.

24           (b) RISK ASSESSMENT.—

1           (1) REQUIREMENT.—The Secretary shall, in es-  
 2           tablishing and maintaining the National Security  
 3           Control List, balance the national security risks of  
 4           not controlling the export of an item against the eco-  
 5           nomic costs of controlling the item, taking into con-  
 6           sideration the risk factors set forth in paragraph  
 7           (2).

8           (2) RISK FACTORS.—The risk factors referred  
 9           to in paragraph (1), with respect to each item, are  
 10          as follows:

11                   (A) The characteristics of the item.

12                   (B) The threat, if any, to the United  
 13           States or the national security interest of the  
 14           United States from the misuse or diversion of  
 15           such item.

16                   (C) The controllability of the item.

17                   (D) Any other risk factor the Secretary  
 18           deems appropriate to consider.

19   **SEC. 203. COUNTRY TIERS.**

20           (a) IN GENERAL.—

21                   (1) ESTABLISHMENT AND ASSIGNMENT.—In  
 22           administering export controls for national security  
 23           purposes under this title, the President shall, not  
 24           later than 120 days after the date of enactment of  
 25           this Act—

1 (A) establish and maintain a country  
2 tiering system in accordance with subsection  
3 (b); and

4 (B) based on the assessments required  
5 under subsection (c), assign each country to a  
6 tier for each item or group of items the export  
7 of which is controlled for national security pur-  
8 poses under this title.

9 (2) CONSULTATION.—The establishment and  
10 assignment of country tiers under this section shall  
11 be made after consultation with the Secretary, the  
12 Secretary of Defense, the Secretary of State, the in-  
13 telligence agencies, and such other departments and  
14 agencies as the President considers appropriate.

15 (3) REDETERMINATION AND REVIEW OF AS-  
16 SIGNMENTS.—The President may redetermine the  
17 assignment of a country to a particular tier at any  
18 time and shall review and, as the President con-  
19 siders appropriate, reassign country tiers on an on-  
20 going basis.

21 (4) EFFECTIVE DATE OF TIER ASSIGNMENT.—  
22 An assignment of a country to a particular tier shall  
23 take effect on the date on which notice of the assign-  
24 ment is published in the Federal Register.

25 (b) TIERS.—

1           (1) IN GENERAL.—The President shall establish  
2       a country tiering system consisting of 5 tiers for  
3       purposes of this section, ranging from tier 1 through  
4       tier 5.

5           (2) RANGE.—Countries that represent the low-  
6       est risk of diversion or misuse of an item on the Na-  
7       tional Security Control List shall be assigned to tier  
8       1. Countries that represent the highest risk of diver-  
9       sion or misuse of an item on the National Security  
10      Control List shall be assigned to tier 5.

11          (3) OTHER COUNTRIES.—Countries that fall be-  
12      tween the lowest and highest risk to the national se-  
13      curity interest of the United States with respect to  
14      the risk of diversion or misuse of an item on the Na-  
15      tional Security Control List shall be assigned to tier  
16      2, 3, or 4, respectively, based on the assessments re-  
17      quired under subsection (c).

18          (c) ASSESSMENTS.—The President shall make an as-  
19      sessment of each country in assigning a country tier tak-  
20      ing into consideration the following risk factors:

21           (1) The present and potential relationship of  
22      the country with the United States.

23           (2) The present and potential relationship of  
24      the country with countries friendly to the United

1 States and with countries hostile to the United  
2 States.

3 (3) The country's capabilities regarding chem-  
4 ical, biological, and nuclear weapons and the coun-  
5 try's membership in, and level of compliance with,  
6 relevant multilateral export control regimes.

7 (4) The country's position regarding missile  
8 systems and the country's membership in, and level  
9 of compliance with, relevant multilateral export con-  
10 trol regimes.

11 (5) The country's other military capabilities  
12 and the potential threat posed by the country to the  
13 United States or its allies.

14 (6) The effectiveness of the country's export  
15 control system.

16 (7) The level of the country's cooperation with  
17 United States export control enforcement and other  
18 efforts.

19 (8) The risk of export diversion by the country  
20 to a higher tier country.

21 (9) The designation of the country as a country  
22 supporting international terrorism under section  
23 310.

1 **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

2 (a) EXPORT OF ITEMS CONTAINING CONTROLLED  
3 PARTS AND COMPONENTS.—Controls may not be imposed  
4 under this title or any other provision of law on an item  
5 solely because the item contains parts or components sub-  
6 ject to export controls under this title, if the parts or  
7 components—

8 (1) are essential to the functioning of the item,

9 (2) are customarily included in sales of the item  
10 in countries other than controlled countries, and

11 (3) comprise 25 percent or less of the total  
12 value of the item,

13 unless the item itself, if exported, would by virtue of  
14 the functional characteristics of the item as a whole  
15 make a significant contribution to the military or  
16 proliferation potential of a controlled country or end  
17 user which would prove detrimental to the national  
18 security of the United States.

19 (b) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-  
20 PORATING UNITED STATES CONTROLLED CONTENT.—

21 (1) IN GENERAL.—No authority or permission  
22 may be required under this title to reexport to a  
23 country (other than a country designated as a coun-  
24 try supporting international terrorism pursuant to  
25 section 310) an item that is produced in a country  
26 other than the United States and incorporates parts

1 or components that are subject to the jurisdiction of  
2 the United States, if the value of the controlled  
3 United States content of the item produced in such  
4 other country is 25 percent or less of the total value  
5 of the item.

6 (2) REEXPORT TO CERTAIN TERRORIST COUN-  
7 TRIES.—No authority or permission may be required  
8 under this title to reexport to a country designated  
9 as a country supporting international terrorism pur-  
10 suant to section 310 an item that is produced in a  
11 country other than the United States and incor-  
12 porates parts or components that are subject to the  
13 jurisdiction of the United States, if the value of the  
14 controlled United States content of the item pro-  
15 duced in such other country is 10 percent or less of  
16 the total value of the item.

17 (3) DEFINITION OF CONTROLLED UNITED  
18 STATES CONTENT.—For purposes of this paragraph,  
19 the term “controlled United States content” of an  
20 item means those parts or components that—

21 (A) are subject to the jurisdiction of the  
22 United States;

23 (B) are incorporated into the item; and

24 (C) would, at the time of the reexport, re-  
25 quire a license under this title if exported from

1 the United States to a country to which the  
2 item is to be reexported.

3 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**  
4 **STATUS.**

5 (a) ESTABLISHMENT.—The Secretary shall establish  
6 a process for interested persons to petition the Secretary  
7 to change the status of an item on the National Security  
8 Control List.

9 (b) EVALUATIONS AND DETERMINATIONS.—Evalua-  
10 tions and determinations with respect to a petition filed  
11 pursuant to this section shall be made in accordance with  
12 the procedures set forth in section 202.

13 **Subtitle B—Foreign Availability**  
14 **and Mass-Market Status**

15 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND**  
16 **MASS-MARKET STATUS.**

17 (a) IN GENERAL.—The Secretary shall—

18 (1) on a continuing basis,

19 (2) upon a request from the Office of Tech-  
20 nology Evaluation, or

21 (3) upon receipt of a petition filed by an inter-  
22 ested party,

23 review and determine the foreign availability and the  
24 mass-market status of any item the export of which is con-  
25 trolled under this title.

1 (b) PETITION AND CONSULTATION.—The Secretary  
 2 shall establish a process for an interested party to petition  
 3 the Secretary for a determination that an item has a for-  
 4 eign availability or mass-market status. In evaluating and  
 5 making a determination with respect to a petition filed  
 6 under this section, the Secretary shall consult with the  
 7 Secretary of Defense and other appropriate Government  
 8 agencies and with the Office of Technology Evaluation (es-  
 9 tablished pursuant to section 214).

10 (c) RESULT OF DETERMINATION.—

11 (1) IN GENERAL.—In any case in which the  
 12 Secretary determines, in accordance with procedures  
 13 and criteria which the Secretary shall by regulation  
 14 establish, that an item described in subsection (a)  
 15 has—

16 (A) a foreign availability status, or

17 (B) a mass-market status,

18 the Secretary shall notify the President (and other  
 19 appropriate departments and agencies) and publish  
 20 the notice of the determination in the Federal Reg-  
 21 ister. The Secretary's determination shall become  
 22 final 30 days after the date the notice is published,  
 23 the item shall be removed from the National Secu-  
 24 rity Control List, and a license or other authoriza-  
 25 tion shall not be required under this title or under

1 section 1211 of the National Defense Authorization  
 2 Act of Fiscal Year 1998 with respect to the item,  
 3 unless the President makes a determination de-  
 4 scribed in section 212 or 213 with respect to the  
 5 item in that 30-day period.

6 (2) CONFORMING AMENDMENT.—Section  
 7 1211(d) of the National Defense Authorization Act  
 8 for Fiscal Year 1998 is amended in the second sen-  
 9 tence by striking “180” and inserting “60”.

10 (d) CRITERIA FOR DETERMINING FOREIGN AVAIL-  
 11 ABILITY AND MASS-MARKET STATUS.—

12 (1) FOREIGN AVAILABILITY STATUS.—The Sec-  
 13 retary shall determine that an item has foreign  
 14 availability status under this subtitle, if the item (or  
 15 a substantially identical or directly competitive  
 16 item)—

17 (A) is available to controlled countries  
 18 from sources outside the United States, includ-  
 19 ing countries that participate with the United  
 20 States in multilateral export controls;

21 (B) can be acquired at a price that is not  
 22 excessive when compared to the price at which  
 23 a controlled country could acquire such item  
 24 from sources within the United States in the  
 25 absence of export controls; and

1 (C) is available in sufficient quantity so  
 2 that the requirement of a license or other au-  
 3 thorization with respect to the export of such  
 4 item is or would be ineffective.

5 (2) MASS-MARKET STATUS.—The Secretary  
 6 shall determine that an item has mass-market status  
 7 under this subtitle, if the item (or a substantially  
 8 identical or directly competitive item)—

9 (A) is produced and is available for sale in  
 10 a large volume to multiple potential purchasers;

11 (B) is widely distributed through normal  
 12 commercial channels, such as retail stores, di-  
 13 rect marketing catalogues, electronic commerce,  
 14 and other channels;

15 (C) is conducive to shipment and delivery  
 16 by generally accepted commercial means of  
 17 transport; and

18 (D) may be used for its normal intended  
 19 purpose without substantial and specialized  
 20 service provided by the manufacturer, dis-  
 21 tributor, or other third party.

22 (3) SPECIAL RULES.—For purposes of this  
 23 subtitle—

24 (A) SUBSTANTIALLY IDENTICAL ITEM.—

25 The determination of whether an item in rela-

tion to another item is a substantially identical item shall include a fair assessment of end-uses, the properties, nature, and quality of the item.

(B) DIRECTLY COMPETITIVE ITEM.—

(i) IN GENERAL.—The determination of whether an item in relation to another item is a directly competitive item shall include a fair assessment of whether the item, although not substantially identical in its intrinsic or inherent characteristics, is substantially equivalent for commercial purposes and may be adapted for substantially the same uses.

(ii) EXCEPTION.—An item is not directly competitive with a controlled item if the item is substantially inferior to the controlled item with respect to characteristics that resulted in the export of the item being controlled.

**SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAILABILITY DETERMINATION.**

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) POTENTIAL FOR ELIMINATION.—If the President determines that—

1 (A) the absence of export controls with re-  
 2 spect to an item would prove detrimental to the  
 3 national security of the United States, and

4 (B) there is a high probability that the for-  
 5 eign availability status of an item will be elimi-  
 6 nated through multilateral negotiations within a  
 7 reasonable period of time taking into account  
 8 the characteristics of the item,  
 9 the President may set aside the Secretary's deter-  
 10 mination of foreign availability status with respect to  
 11 the item.

12 (2) REPORT TO CONGRESS.—The President  
 13 shall promptly—

14 (A) report any set-aside determination de-  
 15 scribed in paragraph (1) to the Committee on  
 16 Banking, Housing, and Urban Affairs of the  
 17 Senate and the Committee on International Re-  
 18 lations of the House of Representatives; and

19 (B) publish the determination in the Fed-  
 20 eral Register.

21 (b) PRESIDENTIAL ACTION IN CASE OF SET-  
 22 ASIDE.—

23 (1) IN GENERAL.—

24 (A) NEGOTIATIONS.—In any case in which  
 25 export controls are maintained on an item be-

1           cause the President has made a determination  
2           under subsection (a), the President shall ac-  
3           tively pursue negotiations with the governments  
4           of the appropriate foreign countries for the pur-  
5           pose of eliminating such availability.

6           (B) REPORT TO CONGRESS.—Not later  
7           than the date the President begins negotiations,  
8           the President shall notify in writing the Com-  
9           mittee on Banking, Housing, and Urban Affairs  
10          of the Senate and the Committee on Inter-  
11          national Relations of the House of Representa-  
12          tives that the President has begun such nego-  
13          tiations and why the President believes it is im-  
14          portant to the national security that export con-  
15          trols on the item involved be maintained.

16          (2) PERIODIC REVIEW OF DETERMINATION.—

17          The President shall review a determination described  
18          in subsection (a) at least every 6 months. Promptly  
19          after each review is completed, the Secretary shall  
20          submit to the committees of Congress referred to in  
21          paragraph (1)(B) a report on the results of the re-  
22          view, together with the status of multilateral nego-  
23          tiations to eliminate the foreign availability of the  
24          item.

1           (3) EXPIRATION OF PRESIDENTIAL SET-  
2        ASIDE.—A determination by the President described  
3        in subsection (a) shall cease to apply with respect to  
4        an item on the earlier of—

5           (A) the date that is 6 months after the date  
6           on which the determination is made under sub-  
7           section (a), if the President has not commenced  
8           multilateral negotiations to eliminate the for-  
9           eign availability of the item within that 6-month  
10          period;

11          (B) the date on which the negotiations de-  
12          scribed in paragraph (1) have terminated with-  
13          out achieving an agreement to eliminate foreign  
14          availability;

15          (C) the date on which the President deter-  
16          mines that there is not a high probability of  
17          eliminating foreign availability of the item  
18          through negotiation; or

19          (D) the date that is 18 months after the  
20          date on which the determination described in  
21          subsection (a) is made if the President has been  
22          unable to achieve an agreement to eliminate  
23          foreign availability within that 18-month period.

24        (4) ACTION ON EXPIRATION OF PRESIDENTIAL  
25        SET-ASIDE.—Upon the expiration of a Presidential

1 set-aside under paragraph (3) with respect to an  
2 item, the Secretary shall not require a license or  
3 other authorization to export the item.

4 **SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-**  
5 **TUS DETERMINATION.**

6 (a) **CRITERIA FOR SET-ASIDE.**—If the President de-  
7 termines that—

8 (1) decontrolling or failing to control an item  
9 constitutes a serious threat to the national security  
10 of the United States, and

11 (2) export controls on the item would be likely  
12 to diminish the threat to, and advance the national  
13 security interests of, the United States,

14 the President may set aside the Secretary's determination  
15 of mass-market status with respect to the item.

16 (b) **PRESIDENTIAL ACTION IN CASE OF SET-**  
17 **ASIDE.**—

18 (1) **IN GENERAL.**—In any case in which export  
19 controls are maintained on an item because the  
20 President has made a determination under sub-  
21 section (a), the President shall publish notice of the  
22 determination in the Federal Register not later than  
23 30 days after the Secretary publishes notice of the  
24 Secretary's determination that an item has mass-  
25 market status.

1           (2) PERIODIC REVIEW OF DETERMINATION.—

2           The President shall review a determination made  
3           under subsection (a) at least every 6 months.  
4           Promptly after each review is completed, the Sec-  
5           retary shall submit a report on the results of the re-  
6           view to the Committee on Banking, Housing, and  
7           Urban Affairs of the Senate and the Committee on  
8           International Relations of the House of Representa-  
9           tives.

10 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

11           (a) IN GENERAL.—The Secretary shall establish in  
12           the Department of Commerce an Office of Technology  
13           Evaluation (in this subtitle referred to as the “Office”),  
14           which shall be under the direction of the Secretary. The  
15           Office shall be responsible for gathering and analyzing all  
16           the necessary information in order for the Secretary to  
17           make determinations of foreign availability and mass-mar-  
18           ket status under this Act.

19           (b) RESPONSIBILITIES.—The Office shall be respon-  
20           sible for—

21                   (1) conducting foreign availability assessments  
22                   to determine whether a controlled item is available  
23                   to controlled countries and whether requiring a li-  
24                   cense, or denial of a license for the export of such  
25                   item, is or would be ineffective;

1           (2) conducting mass-market assessments to de-  
2       termine whether a controlled item is available to  
3       controlled countries because of the mass-market sta-  
4       tus of the item;

5           (3) monitoring and evaluating worldwide tech-  
6       nological developments in industry sectors critical to  
7       the national security interests of the United States  
8       to determine foreign availability and mass-market  
9       status of controlled items;

10          (4) monitoring and evaluating multilateral ex-  
11       port control regimes and foreign government export  
12       control policies and practices that affect the national  
13       security interests of the United States;

14          (5) conducting assessments of United States in-  
15       dustrial sectors critical to the United States defense  
16       industrial base and how the sectors are affected by  
17       technological developments, technology transfers,  
18       and foreign competition; and

19          (6) conducting assessments of the impact of  
20       United States export control policies on—

21               (A) United States industrial sectors critical  
22               to the national security interests of the United  
23               States; and

24               (B) the United States economy in general.

1       (c) REPORTS TO CONGRESS.—The Secretary shall  
2 make available to the Committee on International Rela-  
3 tions of the House of Representatives and the Committee  
4 on Banking, Housing, and Urban Affairs of the Senate  
5 as part of the Secretary’s annual report required under  
6 section 801 information on the operations of the Office,  
7 and on improvements in the Government’s ability to assess  
8 foreign availability and mass-market status, during the  
9 fiscal year preceding the report, including information on  
10 the training of personnel, and the use of Commercial Serv-  
11 ice Officers of the United States and Foreign Commercial  
12 Service to assist in making determinations. The informa-  
13 tion shall also include a description of representative de-  
14 terminations made under this Act during the preceding  
15 fiscal year that foreign availability or mass-market status  
16 did or did not exist (as the case may be), together with  
17 an explanation of the determinations.

18       (d) SHARING OF INFORMATION.—Each department  
19 or agency of the United States, including any intelligence  
20 agency, and all contractors with any such department or  
21 agency, shall, consistent with the protection of intelligence  
22 sources and methods, furnish information to the Office  
23 concerning foreign availability and the mass-market status  
24 of items subject to export controls under this Act.

1       **TITLE III—FOREIGN POLICY**  
2               **EXPORT CONTROLS**

3   **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**  
4               **TROLS.**

5       (a) **AUTHORITY.**—

6           (1) **IN GENERAL.**—In order to carry out the  
7       purposes set forth in subsection (b), the President  
8       may, in accordance with the provisions of this Act,  
9       prohibit, curtail, or require a license, other author-  
10      ization, recordkeeping, or reporting for the export of  
11      any item subject to the jurisdiction of the United  
12      States or exported by any person subject to the ju-  
13      risdiction of the United States.

14          (2) **EXERCISE OF AUTHORITY.**—The authority  
15      contained in this subsection shall be exercised by the  
16      Secretary, in consultation with the Secretary of  
17      State and such other departments and agencies as  
18      the Secretary considers appropriate.

19      (b) **PURPOSES.**—The purposes of foreign policy ex-  
20      port controls are the following:

21           (1) To promote the foreign policy objectives of  
22      the United States, consistent with the purposes of  
23      this section and the provisions of this Act.

24           (2) To promote international peace, stability,  
25      and respect for fundamental human rights.

1           (3) To use export controls to deter and punish  
2       acts of international terrorism and to encourage  
3       other countries to take immediate steps to prevent  
4       the use of their territories or resources to aid, en-  
5       courage, or give sanctuary to those persons involved  
6       in directing, supporting, or participating in acts of  
7       international terrorism.

8       (c) EXCEPTION.—The President may not control  
9       under this title the export from a foreign country (whether  
10      or not by a United States person) of any item produced  
11      or originating in a foreign country that contains parts or  
12      components produced or originating in the United States.

13      (d) CONTRACT SANCTITY.—

14           (1) IN GENERAL.—The President may not pro-  
15      hibit the export of any item under this title if that  
16      item is to be exported—

17           (A) in performance of a binding contract,  
18           agreement, or other contractual commitment  
19           entered into before the date on which the Presi-  
20           dent reports to Congress the President’s inten-  
21           tion to impose controls on that item under this  
22           title; or

23           (B) under a license or other authorization  
24           issued under this Act before the earlier of the  
25           date on which the control is initially imposed or

1 the date on which the President reports to Con-  
 2 gress the President's intention to impose con-  
 3 trols under this title.

4 (2) EXCEPTION.—The prohibition contained in  
 5 paragraph (1) shall not apply in any case in which  
 6 the President determines and certifies to the Com-  
 7 mittee on Banking, Housing, and Urban Affairs of  
 8 the Senate and the Committee on International Re-  
 9 lations of the House of Representatives that—

10 (A) there is a serious threat to a foreign  
 11 policy interest of the United States;

12 (B) the prohibition of exports under each  
 13 binding contract, agreement, commitment, li-  
 14 cense, or authorization will be directly instru-  
 15 mental in remedying the situation posing the  
 16 serious threat; and

17 (C) the export controls will be in effect  
 18 only as long as the serious threat exists.

19 **SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

20 (a) NOTICE.—

21 (1) INTENT TO IMPOSE FOREIGN POLICY EX-  
 22 PORT CONTROL.—Except as provided in section 306,  
 23 not later than 45 days before imposing or imple-  
 24 menting an export control under this title, the Presi-  
 25 dent shall publish in the Federal Register—

1 (A) a notice of intent to do so; and

2 (B) provide for a period of not less than  
3 30 days for any interested person to submit  
4 comments on the export control proposed under  
5 this title.

6 (2) PURPOSES OF NOTICE.—The purposes of  
7 the notice are—

8 (A) to provide an opportunity for the for-  
9 mulation of an effective export control policy  
10 under this title that advances United States  
11 economic and foreign policy interests; and

12 (B) to provide an opportunity for negotia-  
13 tions to achieve the purposes set forth in sec-  
14 tion 301(b).

15 (b) NEGOTIATIONS.—During the 45-day period that  
16 begins on the date of notice described in subsection (a),  
17 the President may negotiate with the government of the  
18 foreign country against which the export control is pro-  
19 posed in order to resolve the reasons underlying the pro-  
20 posed export control.

21 (c) CONSULTATION.—

22 (1) REQUIREMENT.—The President shall con-  
23 sult with the Committee on Banking, Housing, and  
24 Urban Affairs of the Senate and the Committee on  
25 International Relations of the House of Representa-

1       tives regarding any export control proposed under  
 2       this title and the efforts to achieve or increase multi-  
 3       lateral cooperation on the issues or problems under-  
 4       lying the proposed export control.

5           (2) CLASSIFIED CONSULTATION.—The con-  
 6       sultations described in paragraph (1) may be con-  
 7       ducted on a classified basis if the Secretary con-  
 8       siders it necessary.

9       **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**  
 10       **TROLS.**

11       Each export control imposed by the President under  
 12       this title shall—

13           (1) have clearly stated, specific, and compelling  
 14       United States foreign policy objectives;

15           (2) have objective standards for evaluating the  
 16       success or failure of the export control;

17           (3) include an assessment by the President  
 18       that—

19           (A) the export control is likely to achieve  
 20       such objectives and the expected time for  
 21       achieving the objectives; and

22           (B) the achievement of the objectives of  
 23       the export control outweighs any potential costs  
 24       of the export control to other United States

1 economic, foreign policy, humanitarian, or na-  
2 tional security interests;  
3 (4) be targeted narrowly; and  
4 (5) seek to minimize any adverse impact on the  
5 humanitarian activities of United States and foreign  
6 nongovernmental organizations in the country sub-  
7 ject to the export control.

8 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**  
9 **CONTROL.**

10 (a) REQUIREMENT.—Before imposing an export con-  
11 trol under this title, the President shall submit to the  
12 Committee on Banking, Housing, and Urban Affairs of  
13 the Senate and the Committee on International Relations  
14 of the House of Representatives a report on the proposed  
15 export control. The report may be provided on a classified  
16 basis if the Secretary considers it necessary.

17 (b) CONTENT.—The report shall contain a descrip-  
18 tion and assessment of each of the criteria described in  
19 section 303. In addition, the report shall contain a descrip-  
20 tion and assessment of—

- 21 (1) any diplomatic and other steps that the  
22 United States has taken to accomplish the intended  
23 objective of the proposed export control;  
24 (2) unilateral export controls imposed, and  
25 other measures taken, by other countries to achieve

1 the intended objective of the proposed export con-  
2 trol;

3 (3) the likelihood of multilateral adoption of  
4 comparable export controls;

5 (4) alternative measures to promote the same  
6 objectives and the likelihood of their potential suc-  
7 cess;

8 (5) any United States obligations under inter-  
9 national trade agreements, treaties, or other inter-  
10 national arrangements, with which the proposed ex-  
11 port control may conflict;

12 (6) the likelihood that the proposed export con-  
13 trol could lead to retaliation against United States  
14 interests;

15 (7) the likely economic impact of the proposed  
16 export control on the United States economy, United  
17 States international trade and investment, and  
18 United States agricultural interests, commercial in-  
19 terests, and employment; and

20 (8) a conclusion that the probable achievement  
21 of the objectives of the proposed export control out-  
22 weighs any likely costs to United States economic,  
23 foreign policy, humanitarian, or national security in-  
24 terests, including any potential harm to the United  
25 States agricultural and business firms and to the

1 international reputation of the United States as a  
2 reliable supplier of goods, services, or technology.

3 **SEC. 305. IMPOSITION OF CONTROLS.**

4 The President may impose an export control under  
5 this title after the submission of the report required under  
6 section 304 and publication in the Federal Register of a  
7 notice of the imposition of the export control .

8 **SEC. 306. DEFERRAL AUTHORITY.**

9 (a) **AUTHORITY.**—The President may defer compli-  
10 ance with any requirement contained in section 302(a),  
11 304, or 305 in the case of a proposed export control if—

12 (1) the President determines that a deferral of  
13 compliance with the requirement is in the national  
14 interest of the United States; and

15 (2) the requirement is satisfied not later than  
16 60 days after the date on which the export control  
17 is imposed under this title.

18 (b) **TERMINATION OF CONTROL.**—An export control  
19 with respect to which a deferral has been made under sub-  
20 section (a) shall terminate 60 days after the date the ex-  
21 port control is imposed unless all requirements have been  
22 satisfied before the expiration of the 60-day period.

23 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

24 (a) **RENEWAL AND TERMINATION.**—

1           (1) IN GENERAL.—Any export control imposed  
2           under this title shall terminate on March 31 of each  
3           renewal year unless the President renews the export  
4           control on or before such date. For purposes of this  
5           section, the term “renewal year” means 2002 and  
6           every 2 years thereafter.

7           (2) EXCEPTION.—This section shall not apply  
8           to an export control imposed under this title that—

9                   (A) is required by law;

10                   (B) is targeted against any country des-  
11           ignated as a country supporting international  
12           terrorism pursuant to section 310; or

13                   (C) has been in effect for less than 1 year  
14           as of February 1 of a renewal year.

15       (b) REVIEW.—

16           (1) IN GENERAL.—Not later than February 1  
17           of each renewal year, the President shall review all  
18           export controls in effect under this title.

19           (2) CONSULTATION.—

20                   (A) REQUIREMENT.—Before completing a  
21           review under paragraph (1), the President shall  
22           consult with the Committee on Banking, Hous-  
23           ing, and Urban Affairs of the Senate and the  
24           Committee on International Relations of the

1 House of Representative regarding each export  
2 control that is being reviewed.

3 (B) CLASSIFIED CONSULTATION.—The  
4 consultations may be conducted on a classified  
5 basis if the Secretary considers it necessary.

6 (3) PUBLIC COMMENT.—In conducting the re-  
7 view of each export control under paragraph (1), the  
8 President shall provide a period of not less than 30  
9 days for any interested person to submit comments  
10 on renewal of the export control. The President shall  
11 publish notice of the opportunity for public comment  
12 in the Federal Register not less than 45 days before  
13 the review is required to be completed.

14 (c) REPORT TO CONGRESS.—

15 (1) REQUIREMENT.—Before renewing an export  
16 control imposed under this title, the President shall  
17 submit to the committees of Congress referred to in  
18 subsection (b)(2)(A) a report on each export control  
19 that the President intends to renew.

20 (2) FORM AND CONTENT OF REPORT.—The re-  
21 port may be provided on a classified basis if the Sec-  
22 retary considers it necessary. Each report shall con-  
23 tain the following:

24 (A) A clearly stated explanation of the spe-  
25 cific and compelling United States foreign pol-

1            icy objective that the existing export control  
2            was intended to achieve.

3            (B) An assessment of—

4                    (i) the extent to the which the existing  
5                    export control achieved its objectives before  
6                    renewal based on the objective criteria es-  
7                    tablished for evaluating the export control;  
8                    and

9                    (ii) the reasons why the existing ex-  
10                    port control has failed to fully achieve its  
11                    objectives and, if renewed, how the export  
12                    control will achieve that objective before  
13                    the next renewal year.

14            (C) An updated description and assess-  
15            ment of—

16                    (i) each of the criteria described in  
17                    section 303, and

18                    (ii) each matter required to be re-  
19                    ported under section 304(b)(1) through  
20                    (8).

21            (3) RENEWAL OF EXPORT CONTROL.—The  
22            President may renew an export control under this  
23            title after submission of the report described in  
24            paragraph (2) and publication of notice of renewal  
25            in the Federal Register.

1 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

2 (a) IN GENERAL.—Notwithstanding any other provi-  
3 sion of law, the President—

4 (1) shall terminate any export control imposed  
5 under this title if the President determines that the  
6 control has substantially achieved the objective for  
7 which it was imposed; and

8 (2) may terminate any export control imposed  
9 under this title that is not required by law at any  
10 time.

11 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-  
12 section (a) do not apply to any export control imposed  
13 under this title that is targeted against any country des-  
14 ignated as a country supporting international terrorism  
15 pursuant to section 310.

16 (c) EFFECTIVE DATE OF TERMINATION.—The termi-  
17 nation of an export control pursuant to this section shall  
18 take effect on the date notice of the termination is pub-  
19 lished in the Federal Register.

20 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**  
21 **TIONS.**

22 Notwithstanding any other provision of this Act set-  
23 ting forth limitations on authority to control exports and  
24 except as provided in section 304, the President may im-  
25 pose controls on exports to a particular country or coun-  
26 tries in order to fulfill obligations of the United States

1 under resolutions of the United Nations and under trea-  
2 ties, or other international agreements and arrangements,  
3 to which the United States is a party.

4 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**  
5 **INTERNATIONAL TERRORISM.**

6 (a) LICENSE REQUIRED.—A license shall be required  
7 for the export of an item to a country if the Secretary  
8 of State has determined that—

9 (1) the government of such country has repeat-  
10 edly provided support for acts of international ter-  
11 rorism; and

12 (2) the export of the item could make a signifi-  
13 cant contribution to the military potential of such  
14 country, including its military logistics capability, or  
15 could enhance the ability of such country to support  
16 acts of international terrorism.

17 (b) NOTIFICATION.—The Secretary and the Sec-  
18 retary of State shall notify the Committee on International  
19 Relations of the House of Representatives and the Com-  
20 mittee on Banking, Housing, and Urban Affairs and the  
21 Committee on Foreign Relations of the Senate at least 30  
22 days before issuing any license required by subsection (a).

23 (c) DETERMINATIONS REGARDING REPEATED SUP-  
24 PORT.—Each determination of the Secretary of State  
25 under subsection (a)(1), including each determination in

1 effect on the date of the enactment of the Antiterrorism  
 2 and Arms Export Amendments Act of 1989, shall be pub-  
 3 lished in the Federal Register.

4 (d) LIMITATIONS ON RESCINDING DETERMINA-  
 5 TION.—A determination made by the Secretary of State  
 6 under subsection (a)(1) may not be rescinded unless the  
 7 President submits to the Speaker of the House of Rep-  
 8 resentatives and the Chairman of the Committee on Bank-  
 9 ing, Housing, and Urban Affairs and the Chairman of the  
 10 Committee on Foreign Relations of the Senate—

11 (1) before the proposed rescission would take  
 12 effect, a report certifying that—

13 (A) there has been a fundamental change  
 14 in the leadership and policies of the government  
 15 of the country concerned;

16 (B) that government is not supporting acts  
 17 of international terrorism; and

18 (C) that government has provided assur-  
 19 ances that it will not support acts of inter-  
 20 national terrorism in the future; or

21 (2) at least 45 days before the proposed rescis-  
 22 sion would take effect, a report justifying the rescis-  
 23 sion and certifying that—

1 (A) the government concerned has not pro-  
2 vided any support for international terrorism  
3 during the preceding 6-month period; and

4 (B) the government concerned has pro-  
5 vided assurances that it will not support acts of  
6 international terrorism in the future.

7 (e) INFORMATION TO BE INCLUDED IN NOTIFICA-  
8 TION.—The Secretary and the Secretary of State shall in-  
9 clude in the notification required by subsection (b)—

10 (1) a detailed description of the item to be of-  
11 fered, including a brief description of the capabilities  
12 of any item for which a license to export is sought;

13 (2) the reasons why the foreign country or  
14 international organization to which the export or  
15 transfer is proposed to be made needs the item  
16 which is the subject of such export or transfer and  
17 a description of the manner in which such country  
18 or organization intends to use the item;

19 (3) the reasons why the proposed export or  
20 transfer is in the national interest of the United  
21 States;

22 (4) an analysis of the impact of the proposed  
23 export or transfer on the military capabilities of the  
24 foreign country or international organization to  
25 which such export or transfer would be made;

1           (5) an analysis of the manner in which the pro-  
 2       posed export would affect the relative military  
 3       strengths of countries in the region to which the  
 4       item which is the subject of such export would be de-  
 5       livered and whether other countries in the region  
 6       have comparable kinds and amounts of the item; and

7           (6) an analysis of the impact of the proposed  
 8       export or transfer on the United States relations  
 9       with the countries in the region to which the item  
 10      which is the subject of such export would be deliv-  
 11      ered.

12 **TITLE IV—EXEMPTION FOR AG-**  
 13 **RICULTURAL COMMODITIES,**  
 14 **MEDICINE, AND MEDICAL**  
 15 **SUPPLIES**

16 **SEC. 401. EXEMPTION FOR AGRICULTURAL COMMODITIES,**  
 17 **MEDICINE, AND MEDICAL SUPPLIES.**

18       Notwithstanding any other provision of law, the ex-  
 19       port controls imposed on items under title III shall not  
 20       apply to agricultural commodities, medicine, and medical  
 21       supplies.

22 **SEC. 402. TERMINATION OF EXPORT CONTROLS REQUIRED**  
 23 **BY LAW.**

24       Notwithstanding any other provision of law, the  
 25       President shall terminate any export control mandated by

1 law on agricultural commodities, medicine, and medical  
 2 supplies upon the date of enactment of this Act except  
 3 for a control that is specifically reimposed by law.

4 **SEC. 403. EXCLUSIONS.**

5 Sections 401 and 402 do not apply to the following:

6 (1) The export of agricultural commodities,  
 7 medicine, and medical supplies that are subject to  
 8 national security export controls under title II.

9 (2) The export of agricultural commodities,  
 10 medicine, and medical supplies to a country against  
 11 which an embargo is in effect under the Trading  
 12 With the Enemy Act.

13 **TITLE V—PROCEDURES FOR EX-**  
 14 **PORT LICENSES AND INTER-**  
 15 **AGENCY DISPUTE RESOLU-**  
 16 **TION**

17 **SEC. 501. EXPORT LICENSE PROCEDURES.**

18 (a) RESPONSIBILITY OF THE SECRETARY.—

19 (1) IN GENERAL.—All applications for a license  
 20 or other authorization to export a controlled item  
 21 shall be filed in such manner and include such infor-  
 22 mation as the Secretary may, by regulation, pre-  
 23 scribe.

24 (2) PROCEDURES.—In guidance and regulations  
 25 that implement this section, the Secretary shall de-

1       scribe the procedures required by this section, the  
 2       responsibilities of the Secretary and of other depart-  
 3       ments and agencies in reviewing applications, the  
 4       rights of the applicant, and other relevant matters  
 5       affecting the review of license applications.

6           (3) CALCULATION OF PROCESSING TIMES.—In  
 7       calculating the processing times set forth in this  
 8       title, the Secretary shall use calendar days, except  
 9       that if the final day for a required action falls on a  
 10      weekend or holiday, that action shall be taken no  
 11      later than the following business day.

12          (4) CRITERIA FOR EVALUATING APPLICA-  
 13      TIONS.—In determining whether to grant an appli-  
 14      cation to export a controlled item under this Act, the  
 15      following criteria shall be considered:

16           (A) The characteristics of the controlled  
 17      item.

18           (B) The threat to the United States or the  
 19      national security interests of the United States  
 20      from the misuse of the item.

21           (C) The risk of export diversion or misuse  
 22      by—

23           (i) the exporter;

24           (ii) the method of export;

25           (iii) the end-user;

1 (iv) the country where the end-user is  
2 located; and

3 (v) the end-use.

4 (D) Risk mitigating factors including, but  
5 not limited to—

6 (i) changing the characteristics of the  
7 controlled item;

8 (ii) after-market monitoring by the ex-  
9 porter; and

10 (iii) post-shipment verification.

11 (b) INITIAL SCREENING.—

12 (1) UPON RECEIPT OF APPLICATION.—Upon re-  
13 ceipt of an export license application, the Secretary  
14 shall enter and maintain in the records of the De-  
15 partment information regarding the receipt and sta-  
16 tus of the application.

17 (2) INITIAL PROCEDURES.—

18 (A) IN GENERAL.—Not later than 9 days  
19 after receiving any license application, the Sec-  
20 retary shall—

21 (i) contact the applicant if the appli-  
22 cation is improperly completed or if addi-  
23 tional information is required, and hold the  
24 application for a reasonable time while the  
25 applicant provides the necessary correc-

1           tions or information, and such time shall  
2           not be included in calculating the time pe-  
3           riods prescribed in this title;

4           (ii) refer the application, through the  
5           use of a common data base or other  
6           means, and all information submitted by  
7           the applicant, and all necessary rec-  
8           ommendations and analyses by the Sec-  
9           retary to the Department of Defense and  
10          other departments and agencies as the  
11          Secretary considers appropriate;

12          (iii) ensure that the classification stat-  
13          ed on the application for the export items  
14          is correct; and

15          (iv) return the application if a license  
16          is not required.

17          (B) REFERRAL NOT REQUIRED.—In the  
18          event that the head of a department or agency  
19          determines that certain types of applications  
20          need not be referred to the department or agen-  
21          cy, such department or agency head shall notify  
22          the Secretary of the specific types of such appli-  
23          cations that the department or agency does not  
24          wish to review.

1           (3) WITHDRAWAL OF APPLICATION.—An appli-  
2           cant may, by written notice to the Secretary, with-  
3           draw an application at any time before final action.

4           (c) ACTION BY OTHER DEPARTMENTS AND AGEN-  
5           CIES.—

6           (1) REFERRAL TO OTHER AGENCIES.—The Sec-  
7           retary shall promptly refer a license application to  
8           the departments and agencies under subsection (b)  
9           to make recommendations and provide information  
10          to the Secretary.

11          (2) RESPONSIBILITY OF REFERRAL DEPART-  
12          MENTS AND AGENCIES.—The Department of De-  
13          fense and other reviewing departments and agencies  
14          shall take all necessary actions in a prompt and re-  
15          sponsible manner on an application. Each depart-  
16          ment or agency reviewing an application under this  
17          section shall establish and maintain records properly  
18          identifying and monitoring the status of the matter  
19          referred to the department or agency.

20          (3) ADDITIONAL INFORMATION REQUESTS.—  
21          Each department or agency to which a license appli-  
22          cation is referred shall specify to the Secretary any  
23          information that is not in the application that would  
24          be required for the department or agency to make  
25          a determination with respect to the application, and

1 the Secretary shall promptly request such informa-  
2 tion from the applicant. The time that may elapse  
3 between the date the information is requested by  
4 that department or agency and the date the infor-  
5 mation is received by that department or agency  
6 shall not be included in calculating the time periods  
7 prescribed in this title.

8 (4) TIME PERIOD FOR ACTION BY REFERRAL  
9 DEPARTMENTS AND AGENCIES.—Within 25 days  
10 after the Secretary refers an application under this  
11 section, each department or agency to which an ap-  
12 plication has been referred shall provide the Sec-  
13 retary with a recommendation either to approve the  
14 license or to deny the license. A recommendation  
15 that the Secretary deny a license shall include a  
16 statement of reasons for the recommendation that  
17 are consistent with the provisions of this title, and  
18 shall cite both the specific statutory and regulatory  
19 basis for the recommendation. A department or  
20 agency that fails to provide a recommendation in ac-  
21 cordance with this paragraph within that 25-day pe-  
22 riod shall be deemed to have no objection to the de-  
23 cision of the Secretary on the application.

1 (d) ACTION BY THE SECRETARY.—Not later than 25  
2 days after the date the application is referred, the Sec-  
3 retary shall—

4 (1) if there is agreement among the referral de-  
5 partments and agencies to issue or deny the  
6 license—

7 (A) issue the license and ensure all appro-  
8 priate personnel in the Department (including  
9 the Office of Export Enforcement) are notified  
10 of all approved license applications; or

11 (B) notify the applicant of the intention to  
12 deny the license; or

13 (2) if there is no agreement among the referral  
14 departments and agencies, notify the applicant that  
15 the application is subject to the interagency dispute  
16 resolution process.

17 (e) CONSEQUENCES OF APPLICATION DENIAL.—

18 (1) IN GENERAL.—If a determination is made  
19 to deny a license, the applicant shall be informed in  
20 writing by the Secretary of—

21 (A) the determination;

22 (B) the specific statutory and regulatory  
23 bases for the proposed denial;

24 (C) what, if any, modifications to, or re-  
25 strictions on, the items for which the license

1 was sought would allow such export to be com-  
2 patible with export controls imposed under this  
3 Act, and which officer or employee of the De-  
4 partment would be in a position to discuss  
5 modifications or restrictions with the applicant  
6 and the specific statutory and regulatory bases  
7 for imposing such modifications or restrictions;

8 (D) to the extent consistent with the na-  
9 tional security and foreign policy interests of  
10 the United States, the specific considerations  
11 that led to the determination to deny the appli-  
12 cation; and

13 (E) the availability of appeal procedures.

14 (2) PERIOD FOR APPLICANT TO RESPOND.—

15 The applicant shall have 20 days from the date of  
16 the notice of intent to deny the application to re-  
17 spond in a manner that addresses and corrects the  
18 reasons for the denial. If the applicant does not ade-  
19 quately address or correct the reasons for denial or  
20 does not respond, the license shall be denied. If the  
21 applicant does address or correct the reasons for de-  
22 nial, the application shall receive consideration in a  
23 timely manner.

24 (f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

1           (1) IN GENERAL.—The Secretary shall establish  
2           appropriate procedures for an applicant to appeal to  
3           the Secretary the denial of an application or other  
4           administrative action under this Act. In any case in  
5           which the Secretary intends to reverse the decision  
6           with respect to the application, the appeal under this  
7           subsection shall be handled in accordance with the  
8           interagency dispute resolution process.

9           (2) ENFORCEMENT OF TIME LIMITS.—

10           (A) IN GENERAL.—In any case in which  
11           an action prescribed in this section is not taken  
12           on an application within the time period estab-  
13           lished by this section (except in the case of a  
14           time period extended under subsection (g) of  
15           which the applicant is notified), the applicant  
16           may file a petition with the Secretary request-  
17           ing compliance with the requirements of this  
18           section. When such petition is filed, the Sec-  
19           retary shall take immediate steps to correct the  
20           situation giving rise to the petition and shall  
21           immediately notify the applicant of such steps.

22           (B) BRINGING COURT ACTION.—If, within  
23           20 days after a petition is filed under subpara-  
24           graph (A), the processing of the application has  
25           not been brought into conformity with the re-

1           quirements of this section, or the processing of  
2           the application has been brought into con-  
3           formity with such requirements but the Sec-  
4           retary has not so notified the applicant, the ap-  
5           plicant may bring an action in an appropriate  
6           United States district court for an order requir-  
7           ing compliance with the time periods required  
8           by this section.

9           (g) EXCEPTIONS FROM REQUIRED TIME PERIODS.—

10          The following actions related to processing an application  
11          shall not be included in calculating the time periods pre-  
12          scribed in this section:

13               (1) AGREEMENT OF THE APPLICANT.—Delays  
14          upon which the Secretary and the applicant mutu-  
15          ally agree.

16               (2) PRELICENSE CHECKS.—A prelicense check  
17          (for a period not to exceed 60 days) that may be re-  
18          quired to establish the identity and reliability of the  
19          recipient of items controlled under this Act, if—

20                       (A) the need for the prelicense check is de-  
21          termined by the Secretary or by another depart-  
22          ment or agency in any case in which the re-  
23          quest for the prelicense check is made by such  
24          department or agency;

1 (B) the request for the prelicense check is  
2 initiated by the Secretary within 5 days after  
3 the determination that the prelicense check is  
4 required; and

5 (C) the analysis of the result of the  
6 prelicense check is completed by the Secretary  
7 within 5 days.

8 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-  
9 MENT ASSURANCES.—Any request by the Secretary  
10 or another department or agency for government-to-  
11 government assurances of suitable end-uses of items  
12 approved for export, when failure to obtain such as-  
13 surances would result in rejection of the application,  
14 if—

15 (A) the request for such assurances is sent  
16 to the Secretary of State within 5 days after  
17 the determination that the assurances are re-  
18 quired;

19 (B) the Secretary of State initiates the re-  
20 quest of the relevant government within 10  
21 days thereafter; and

22 (C) the license is issued within 5 days  
23 after the Secretary receives the requested assur-  
24 ances.

1           (4) EXCEPTION.—Whenever a prelicense check  
2       described in paragraph (2) or assurances described  
3       in paragraph (3) are not requested within the time  
4       periods set forth therein, then the time expended for  
5       such prelicense check or assurances shall be included  
6       in calculating the time periods established by this  
7       section.

8           (5) MULTILATERAL REVIEW.—Multilateral re-  
9       view of a license application to the extent that such  
10      multilateral review is required by a relevant multilat-  
11      eral regime.

12          (6) CONGRESSIONAL NOTIFICATION.—Such  
13      time as is required for mandatory congressional noti-  
14      fications under this Act.

15          (7) CONSULTATIONS.—Consultation with other  
16      governments, if such consultation is provided for by  
17      a relevant multilateral regime as a precondition for  
18      approving a license.

19      (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-  
20      IES.—

21          (1) CLASSIFICATION REQUESTS.—In any case  
22      in which the Secretary receives a written request  
23      asking for the proper classification of an item on the  
24      Control List or the applicability of licensing require-  
25      ments under this title, the Secretary shall promptly

1        notify the Secretary of Defense and other depart-  
2        ments and agencies the Secretary considers appro-  
3        priate. The Secretary shall, within 14 days after re-  
4        ceiving the request, inform the person making the  
5        request of the proper classification.

6            (2) OTHER INQUIRIES.—In any case in which  
7        the Secretary receives a written request for informa-  
8        tion under this Act, the Secretary shall, within 30  
9        days after receiving the request, reply with that in-  
10       information to the person making the request.

11   **SEC. 502. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

12        (a) IN GENERAL.—All license applications on which  
13        agreement cannot be reached shall be referred to the inter-  
14        agency dispute resolution process for decision.

15        (b) INTERAGENCY DISPUTE RESOLUTION PROC-  
16        ESS.—

17            (1) INITIAL RESOLUTION.—The Secretary shall  
18        establish, select the chairperson of, and determine  
19        procedures for an interagency committee to review  
20        initially all license applications described in sub-  
21        section (a) with respect to which the Secretary and  
22        any of the referral departments and agencies are not  
23        in agreement. The chairperson shall consider the po-  
24        sitions of all the referral departments and agencies  
25        (which shall be included in the minutes described

1 subsection (c)(2)) and make a decision on the license  
2 application, including appropriate revisions or condi-  
3 tions thereto.

4 (2) FURTHER RESOLUTION.—The President  
5 shall establish additional levels for review or appeal  
6 of any matter that cannot be resolved pursuant to  
7 the process described in paragraph (1). Each such  
8 review shall—

9 (A) provide for decision-making based on  
10 the majority vote of the participating depart-  
11 ments and agencies;

12 (B) provide that a department or agency  
13 that fails to take a timely position, citing the  
14 specific statutory and regulatory bases for a de-  
15 nial, shall be deemed to have no objection to the  
16 pending decision;

17 (C) provide that any decision of an inter-  
18 agency committee established under paragraph  
19 (1) or interagency dispute resolution process es-  
20 tablished under this paragraph may be esca-  
21 lated to the next higher level of review at the  
22 request of any representative of a department  
23 or agency that participated in the interagency  
24 committee or dispute resolution process that  
25 made the decision; and

1 (D) ensure that matters are resolved or re-  
2 ferred to the President not later than 90 days  
3 after the date the completed license application  
4 is referred by the Secretary.

5 (c) FINAL ACTION.—

6 (1) IN GENERAL.—Once a final decision is  
7 made under subsection (b), the Secretary shall  
8 promptly—

9 (A) issue the license and ensure that all  
10 appropriate personnel in the Department (in-  
11 cluding the Office of Export Enforcement) are  
12 notified of all approved license applications; or

13 (B) notify the applicant of the intention to  
14 deny the application.

15 (2) MINUTES.—The interagency committee and  
16 each level of the interagency dispute resolution proc-  
17 ess shall keep reasonably detailed minutes of all  
18 meetings. On each matter before the interagency  
19 committee or before any other level of the inter-  
20 agency dispute resolution process in which members  
21 disagree, each member shall clearly state the reasons  
22 for the member's position and the reasons shall be  
23 entered in the minutes.

1 **TITLE VI—INTERNATIONAL AR-**  
2 **RANGEMENTS; FOREIGN BOY-**  
3 **COTTS; SANCTIONS; AND EN-**  
4 **FORCEMENT**

5 **SEC. 601. INTERNATIONAL ARRANGEMENTS.**

6 (a) MULTILATERAL EXPORT CONTROL REGIMES.—

7 (1) POLICY.—It is the policy of the United  
8 States to seek multilateral arrangements that sup-  
9 port the national security objectives of the United  
10 States (as described in title II) and that establish  
11 fairer and more predictable competitive opportunities  
12 for United States exporters.

13 (2) PARTICIPATION IN EXISTING REGIMES.—

14 Congress encourages the United States to continue  
15 its active participation in and to strengthen existing  
16 multilateral export control regimes.

17 (3) PARTICIPATION IN NEW REGIMES.—It is the

18 policy of the United States to participate in addi-  
19 tional multilateral export control regimes if such  
20 participation would serve the national security inter-  
21 ests of the United States.

22 (b) ANNUAL REPORT ON MULTILATERAL EXPORT

23 CONTROL REGIMES.—Not later than February 1 of each  
24 year, the President shall submit to the Committee on  
25 Banking, Housing, and Urban Affairs of the Senate and

1 the Committee on International Relations of the House  
2 of Representatives a report evaluating the effectiveness of  
3 each multilateral export control regime, including an as-  
4 sessment of the steps undertaken pursuant to subsections  
5 (c) and (d). The report, or any part of this report, may  
6 be submitted in classified form to the extent the Secretary  
7 considers necessary.

8 (c) STANDARDS FOR MULTILATERAL EXPORT CON-  
9 TROL REGIMES.—The President shall take steps to estab-  
10 lish the following features in any multilateral export con-  
11 trol regime in which the United States is participating or  
12 may participate:

13 (1) FULL MEMBERSHIP.—All supplier countries  
14 are members of the regime, and the policies and ac-  
15 tivities of the members are consistent with the objec-  
16 tives and membership criteria of the multilateral ex-  
17 port control regime.

18 (2) EFFECTIVE ENFORCEMENT AND COMPLI-  
19 ANCE.—The regime promotes enforcement and com-  
20 pliance with the regime's rules and guidelines.

21 (3) PUBLIC UNDERSTANDING.—The regime  
22 makes an effort to enhance public understanding of  
23 the purpose and procedures of the multilateral ex-  
24 port control regime.

1           (4) EFFECTIVE IMPLEMENTATION PROCE-  
2 DURES.—The multilateral export control regime has  
3 procedures for the implementation of its rules and  
4 guidelines through uniform and consistent interpre-  
5 tations of its export controls.

6           (5) ENHANCED COOPERATION WITH REGIME  
7 NONMEMBERS.—There is agreement among the  
8 members of the multilateral export control regime  
9 to—

10               (A) cooperate with governments outside  
11 the regime to restrict the export of items con-  
12 trolled by such regime; and

13               (B) establish an ongoing mechanism in the  
14 regime to coordinate planning and implementa-  
15 tion of export control measures related to such  
16 cooperation.

17           (6) PERIODIC HIGH-LEVEL MEETINGS.—There  
18 are regular periodic meetings of high-level represent-  
19 atives of the governments of members of the multi-  
20 lateral export control regime for the purpose of co-  
21 ordinating export control policies and issuing policy  
22 guidance to members of the regime.

23           (7) COMMON LIST OF CONTROLLED ITEMS.—  
24 There is agreement on a common list of items con-  
25 trolled by the multilateral export control regime.

1           (8) REGULAR UPDATES OF COMMON LIST.—

2           There is a procedure for removing items from the  
3           list of controlled items when the control of such  
4           items no longer serves the objectives of the members  
5           of the multilateral export control regime.

6           (9) TREATMENT OF CERTAIN COUNTRIES.—

7           There is agreement to prevent the export or diver-  
8           sion of the most sensitive items to countries whose  
9           activities are threatening to the national security of  
10          the United States or its allies.

11          (10) HARMONIZATION OF LICENSE APPROVAL

12          PROCEDURES.—There is harmonization among the  
13          members of the regime of their national export li-  
14          cense approval procedures and practices.

15          (11) UNDERCUTTING.—There is a limit with re-  
16          spect to when members of a multilateral export con-  
17          trol regime—

18                 (A) grant export licenses for any item that  
19                 is substantially identical to or directly competi-  
20                 tive with an item controlled pursuant to the re-  
21                 gime, where the United States has denied an  
22                 export license for such item, or

23                 (B) approve exports to a particular end  
24                 user to which the United States has denied ex-  
25                 port license for a similar item.

1 (d) STANDARDS FOR NATIONAL EXPORT CONTROL  
2 SYSTEMS.—The President shall take steps to attain the  
3 cooperation of members of each regime in implementing  
4 effective national export control systems containing the  
5 following features:

6 (1) EXPORT CONTROL LAW.—Enforcement au-  
7 thority, civil and criminal penalties, and statutes of  
8 limitations are sufficient to deter potential violations  
9 and punish violators under the member's export con-  
10 trol law.

11 (2) LICENSE APPROVAL PROCESS.—The system  
12 for evaluating export license applications includes  
13 sufficient technical expertise to assess the licensing  
14 status of exports and ensure the reliability of end  
15 users.

16 (3) ENFORCEMENT.—The enforcement mecha-  
17 nism provides authority for trained enforcement offi-  
18 cers to investigate and prevent illegal exports.

19 (4) DOCUMENTATION.—There is a system of  
20 export control documentation and verification with  
21 respect to controlled items.

22 (5) INFORMATION.—There are procedures for  
23 the coordination and exchange of information con-  
24 cerning licensing, end users, and enforcement with

1 other members of the multilateral export control re-  
 2 gime.

3 (6) RESOURCES.—The member has devoted  
 4 adequate resources to administer effectively the au-  
 5 thorities, systems, mechanisms, and procedures de-  
 6 scribed in paragraphs (1) through (5).

7 (e) OBJECTIVES REGARDING MULTILATERAL EX-  
 8 PORT CONTROL REGIMES.—The President shall seek to  
 9 achieve the following objectives with regard to multilateral  
 10 export control regimes:

11 (1) STRENGTHEN EXISTING REGIMES.—  
 12 Strengthen existing multilateral export control  
 13 regimes—

14 (A) by creating a requirement to share in-  
 15 formation about export license applications  
 16 among members before a member approves an  
 17 export license; and

18 (B) harmonizing national export license  
 19 approval procedures and practices, including  
 20 the elimination of undercutting.

21 (2) REVIEW AND UPDATE.—Review and update  
 22 multilateral regime export control lists with other  
 23 members, taking into account—

24 (A) national security concerns;

25 (B) the controllability of items; and

1 (C) the costs and benefits of controls.

2 (3) ENCOURAGE COMPLIANCE BY NONMEM-  
3 BERS.—Encourage nonmembers of the multilateral  
4 export control regime—

5 (A) to strengthen their national export  
6 control regimes and improve enforcement;

7 (B) to adhere to the appropriate multilat-  
8 eral export control regime; and

9 (C) not to undermine an existing multilat-  
10 eral export control regime by exporting con-  
11 trolled items in a manner inconsistent with the  
12 guidelines of the regime.

13 (f) TRANSPARENCY OF MULTILATERAL EXPORT  
14 CONTROL REGIMES.—

15 (1) PUBLICATION OF INFORMATION ON EACH  
16 EXISTING REGIME.—Not later than 120 days after  
17 the date of enactment of this Act, the Secretary  
18 shall, for each multilateral export control regime (to  
19 the extent that it is not inconsistent with the ar-  
20 rangements of that regime or with the national in-  
21 terest), publish in the Federal Register the following  
22 information with respect to the regime:

23 (A) The purposes of the regime.

24 (B) The members of the regime.

1 (C) The export licensing policy of the re-  
2 gime.

3 (D) The items that are subject to export  
4 controls under the regime, together with all  
5 public notes, understandings, and other aspects  
6 of the agreement of the regime, and all changes  
7 thereto.

8 (E) Any countries, end uses, or end users  
9 that are subject to the export controls of the re-  
10 gime.

11 (F) Rules of interpretation.

12 (G) Major policy actions.

13 (H) The rules and procedures of the re-  
14 gime for establishing and modifying any matter  
15 described in subparagraphs (A) through (G)  
16 and for reviewing export license applications.

17 (2) NEW REGIMES.—Not later than 60 days  
18 after the United States joins or organizes a new  
19 multilateral export control regime, the Secretary  
20 shall, to the extent not inconsistent with arrange-  
21 ments under the regime or with the national inter-  
22 est, publish in the Federal Register the information  
23 described in subparagraphs (A) through (H) of  
24 paragraph (1) with respect to the regime.

1           (3) PUBLICATION OF CHANGES.—Not later  
 2           than 60 days after a multilateral export control re-  
 3           gime adopts any change in the information published  
 4           under this subsection, the Secretary shall, to the ex-  
 5           tent not inconsistent with the arrangements under  
 6           the regime or the national interest, publish such  
 7           changes in the Federal Register.

8           (g) SUPPORT OF OTHER COUNTRIES' EXPORT CON-  
 9           TROL SYSTEMS.—The Secretary is encouraged to continue  
 10          to—

11           (1) participate in training of, and provide train-  
 12           ing to, officials of other countries on the principles  
 13           and procedures for implementing effective export  
 14           controls; and

15           (2) participate in any such training provided by  
 16           other departments and agencies of the United  
 17           States.

18 **SEC. 602. FOREIGN BOYCOTTS.**

19           (a) PURPOSES.—The purposes of this section are as  
 20          follows:

21           (1) To counteract restrictive trade practices or  
 22           boycotts fostered or imposed by foreign countries  
 23           against other countries friendly to the United States  
 24           or against any United States person.

1           (2) To encourage and, in specified cases, re-  
2       quire United States persons engaged in the export of  
3       items to refuse to take actions, including furnishing  
4       information or entering into or implementing agree-  
5       ments, which have the effect of furthering or sup-  
6       porting the restrictive trade practices or boycotts  
7       fostered or imposed by any foreign country against  
8       a country friendly to the United States or against  
9       any United States person.

10       (b) PROHIBITIONS AND EXCEPTIONS.—

11           (1) PROHIBITIONS.—In order to carry out the  
12       purposes set forth in subsection (a), the President  
13       shall issue regulations prohibiting any United States  
14       person, with respect to that person's activities in the  
15       interstate or foreign commerce of the United States,  
16       from taking or knowingly agreeing to take any of  
17       the following actions with intent to comply with, fur-  
18       ther, or support any boycott fostered or imposed by  
19       a foreign country against a country that is friendly  
20       to the United States and is not itself the object of  
21       any form of boycott pursuant to United States law  
22       or regulation:

23           (A) Refusing, or requiring any other per-  
24       son to refuse, to do business with or in the boy-  
25       cotted country, with any business concern orga-

1 nized under the laws of the boycotted country,  
2 with any national or resident of the boycotted  
3 country, or with any other person, pursuant to  
4 an agreement with, or requirement of, or a re-  
5 quest from or on behalf of the boycotting coun-  
6 try (subject to the condition that the intent re-  
7 quired to be associated with such an act in  
8 order to constitute a violation of the prohibition  
9 is not indicated solely by the mere absence of  
10 a business relationship with or in the boycotted  
11 country, with any business concern organized  
12 under the laws of the boycotted country, with  
13 any national or resident of the boycotted coun-  
14 try, or with any other person).

15 (B) Refusing, or requiring any other per-  
16 son to refuse, to employ or otherwise discrimi-  
17 nate against any United States person on the  
18 basis of the race, religion, sex, or national ori-  
19 gin of that person or of any owner, officer, di-  
20 rector, or employee of such person.

21 (C) Furnishing information with respect to  
22 the race, religion, sex, or national origin of any  
23 United States person or of any owner, officer,  
24 director, or employee of such person.

1           (D) Furnishing information (other than  
2           furnishing normal business information in a  
3           commercial context, as defined by the Sec-  
4           retary) about whether any person has, has had,  
5           or proposes to have any business relationship  
6           (including a relationship by way of sale, pur-  
7           chase, legal or commercial representation, ship-  
8           ping or other transport, insurance, investment,  
9           or supply) with or in the boycotted country,  
10          with any business concern organized under the  
11          laws of the boycotted country, with any national  
12          or resident of the boycotted country, or with  
13          any other person that is known or believed to  
14          be restricted from having any business relation-  
15          ship with or in the boycotting country.

16          (E) Furnishing information about whether  
17          any person is a member of, has made a con-  
18          tribution to, or is otherwise associated with or  
19          involved in the activities of any charitable or  
20          fraternal organization which supports the boy-  
21          cotted country.

22          (F) Paying, honoring, confirming, or other-  
23          wise implementing a letter of credit which con-  
24          tains any condition or requirement the compli-  
25          ance with which is prohibited by regulations

1           issued pursuant to this paragraph, and no  
2           United States person shall, as a result of the  
3           application of this paragraph, be obligated to  
4           pay or otherwise honor or implement such letter  
5           of credit.

6           (2) EXCEPTIONS.—Regulations issued pursuant  
7           to paragraph (1) shall provide exceptions for—

8                   (A) compliance, or agreement to comply,  
9           with requirements—

10                          (i) prohibiting the import of items  
11                          from the boycotted country or items pro-  
12                          duced or provided, by any business concern  
13                          organized under the laws of the boycotted  
14                          country or by nationals or residents of the  
15                          boycotted country; or

16                          (ii) prohibiting the shipment of items  
17                          to the boycotting country on a carrier of  
18                          the boycotted country or by a route other  
19                          than that prescribed by the boycotting  
20                          country or the recipient of the shipment;

21                   (B) compliance, or agreement to comply,  
22           with import and shipping document require-  
23           ments with respect to the country of origin, the  
24           name of the carrier and route of shipment, the  
25           name of the supplier of the shipment, or the

1 name of the provider of other services, except  
2 that, for purposes of applying any exception  
3 under this subparagraph, no information know-  
4 ingly furnished or conveyed in response to such  
5 requirements may be stated in negative, black-  
6 listing, or similar exclusionary terms, other  
7 than with respect to carriers or route of ship-  
8 ment as may be permitted by such regulations  
9 in order to comply with precautionary require-  
10 ments protecting against war risks and confis-  
11 cation;

12 (C) compliance, or agreement to comply, in  
13 the normal course of business with the unilat-  
14 eral and specific selection by a boycotting coun-  
15 try, or a national or resident thereof, or car-  
16 riers, insurers, suppliers of services to be per-  
17 formed within the boycotting country, or spe-  
18 cific items which, in the normal course of busi-  
19 ness, are identifiable by source when imported  
20 into the boycotting country;

21 (D) compliance, or agreement to comply,  
22 with export requirements of the boycotting  
23 country relating to shipment or transshipment  
24 of exports to the boycotted country, to any busi-  
25 ness concern of or organized under the laws of

1 the boycotted country, or to any national or  
 2 resident of the boycotted country;

3 (E) compliance by an individual, or agree-  
 4 ment by an individual to comply, with the immi-  
 5 gration or passport requirements of any country  
 6 with respect to such individual or any member  
 7 of such individual's family or with requests for  
 8 information regarding requirements of employ-  
 9 ment of such individual within the boycotting  
 10 country; and

11 (F) compliance by a United States person  
 12 resident in a foreign country, or agreement by  
 13 such a person to comply, with the laws of the  
 14 country with respect to the person's activities  
 15 exclusively therein, and such regulations may  
 16 contain exceptions for such resident complying  
 17 with the laws or regulations of the foreign coun-  
 18 try governing imports into such country of  
 19 trademarked, trade-named, or similarly specifi-  
 20 cally identifiable products, or components of  
 21 products for such person's own use, including  
 22 the performance of contractual services within  
 23 that country.

24 (3) LIMITATION ON EXCEPTIONS.—Regulations  
 25 issued pursuant to paragraphs (2)(C) and (2)(F)

1 shall not provide exceptions from paragraphs (1)(B)  
 2 and (1)(C).

3 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT  
 4 AFFECTED.—Nothing in this subsection may be con-  
 5 strued to supersede or limit the operation of the  
 6 antitrust or civil rights laws of the United States.

7 (5) EVASION.—This section applies to any  
 8 transaction or activity undertaken by or through a  
 9 United States person or any other person with in-  
 10 tent to evade the provisions of this section or the  
 11 regulations issued pursuant to this subsection. The  
 12 regulations issued pursuant to this section shall ex-  
 13 pressly provide that the exceptions set forth in para-  
 14 graph (2) do not permit activities or agreements (ex-  
 15 pressed or implied by a course of conduct, including  
 16 a pattern of responses) that are otherwise prohib-  
 17 ited, pursuant to the intent of such exceptions.

18 (c) ADDITIONAL REGULATIONS AND REPORTS.—

19 (1) REGULATIONS.—In addition to the regula-  
 20 tions issued pursuant to subsection (b), regulations  
 21 issued pursuant to title III shall implement the pur-  
 22 poses set forth in subsection (a).

23 (2) REPORTS BY UNITED STATES PERSONS.—  
 24 The regulations shall require that any United States  
 25 person receiving a request to furnish information,

1 enter into or implement an agreement, or take any  
2 other action referred to in subsection (a) shall report  
3 that request to the Secretary, together with any  
4 other information concerning the request that the  
5 Secretary determines appropriate. The person shall  
6 also submit to the Secretary a statement regarding  
7 whether the person intends to comply, and whether  
8 the person has complied, with the request. Any re-  
9 port filed pursuant to this paragraph shall be made  
10 available promptly for public inspection and copying,  
11 except that information regarding the quantity, de-  
12 scription, and value of any item to which such report  
13 relates may be treated as confidential if the Sec-  
14 retary determines that disclosure of that information  
15 would place the United States person involved at a  
16 competitive disadvantage. The Secretary shall peri-  
17 odically transmit summaries of the information con-  
18 tained in the reports to the Secretary of State for  
19 such action as the Secretary of State, in consultation  
20 with the Secretary, considers appropriate to carry  
21 out the purposes set forth in subsection (a).

22 (d) PREEMPTION.—The provisions of this section and  
23 the regulations issued under this section shall preempt any  
24 law, rule, or regulation that—

1           (1) is a law, rule, or regulation of any of the  
2           several States or the District of Columbia, or any of  
3           the territories or possessions of the United States,  
4           or of any governmental subdivision thereof; and

5           (2) pertains to participation in, compliance  
6           with, implementation of, or the furnishing of infor-  
7           mation regarding restrictive trade practices or boy-  
8           cotts fostered or imposed by foreign countries  
9           against other countries.

10 **SEC. 603. PENALTIES.**

11           (a) CRIMINAL PENALTIES.—

12           (1) VIOLATIONS BY AN INDIVIDUAL.—Any indi-  
13           vidual who knowingly violates, conspires to violate,  
14           or attempts to violate any provision of this Act or  
15           any regulation, license, or order issued under this  
16           Act shall be fined up to 10 times the value of the  
17           exports involved or \$1,000,000, whichever is greater,  
18           imprisoned for not more than 10 years, or both, for  
19           each violation, except that the term of imprisonment  
20           may be increased to life for multiple violations or ag-  
21           gravated circumstances.

22           (2) VIOLATIONS BY A PERSON OTHER THAN AN  
23           INDIVIDUAL.—Any person other than an individual  
24           who knowingly violates, conspires to violate, or at-  
25           tempts to violate any provision of this Act or any

1 regulation, license, or order issued under this Act  
2 shall be fined up to 10 times the value of the exports  
3 involved or \$10,000,000, whichever is greater, for  
4 each violation.

5 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-  
6 CEEDS.—

7 (1) FORFEITURE.—Any person who is convicted  
8 under paragraph (1) or (2) of subsection (a) shall,  
9 in addition to any other penalty, forfeit to the  
10 United States—

11 (A) any of that person's security or other  
12 interest in, claim against, or property or con-  
13 tractual rights of any kind in the tangible items  
14 that were the subject of the violation;

15 (B) any of that person's security or other  
16 interest in, claim against, or property or con-  
17 tractual rights of any kind in the tangible prop-  
18 erty that was used in the export or attempt to  
19 export that was the subject of the violation; and

20 (C) any of that person's property consti-  
21 tuting, or derived from, any proceeds obtained  
22 directly or indirectly as a result of the violation.

23 (2) PROCEDURES.—The procedures in any for-  
24 feiture under this subsection, and the duties and au-  
25 thority of the courts of the United States and the

1 Attorney General with respect to any forfeiture ac-  
 2 tion under this subsection, or with respect to any  
 3 property that may be subject to forfeiture under this  
 4 subsection, shall be governed by the provisions of  
 5 chapter 46 of title 18, United States Code, to the  
 6 same extent as property subject to forfeiture under  
 7 that chapter.

8 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
 9 TIONS.—

10 (1) CIVIL PENALTIES.—The Secretary may im-  
 11 pose a civil penalty of up to \$1,000,000 for each vio-  
 12 lation of a provision of this Act or any regulation,  
 13 license, or order issued under this Act. A civil pen-  
 14 alty under this paragraph may be in addition to, or  
 15 in lieu of, any other liability or penalty which may  
 16 be imposed for such a violation.

17 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-  
 18 retary may deny the export privileges of any person,  
 19 including the suspension or revocation of the author-  
 20 ity of such person to export or receive United  
 21 States-origin items subject to this Act, for a viola-  
 22 tion of a provision of this Act or any regulation, li-  
 23 cense, or order issued under this Act.

24 (3) EXCLUSION FROM PRACTICE.—The Sec-  
 25 retary may exclude any person acting as an attor-

ney, accountant, consultant, freight forwarder, or in any other representative capacity from participating before the Department with respect to a license application or any other matter under this Act.

(d) PAYMENT OF CIVIL PENALTIES.—

(1) PAYMENT AS CONDITION OF FURTHER EXPORT PRIVILEGES.—The payment of a civil penalty imposed under subsection (c) may be made a condition for the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. The period for which the payment of a penalty may be made such a condition may not exceed 1 year after the date on which the payment is due.

(2) DEFERRAL OR SUSPENSION.—

(A) IN GENERAL.—The payment of a civil penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period no longer than any probation period (which may exceed 1 year) that may be imposed upon the person on whom the penalty is imposed.

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under sub-

1 paragraph (A) shall not operate as a bar to the  
 2 collection of the penalty concerned in the event  
 3 that the conditions of the suspension, deferral,  
 4 or probation are not fulfilled.

5 (3) TREATMENT OF PAYMENTS.—Any amount  
 6 paid in satisfaction of a civil penalty imposed under  
 7 subsection (c) shall be covered into the Treasury as  
 8 miscellaneous receipts except as set forth in section  
 9 607(h).

10 (e) REFUNDS.—

11 (1) AUTHORITY.—

12 (A) IN GENERAL.—The Secretary may, in  
 13 the Secretary's discretion, refund any civil pen-  
 14 alty imposed under subsection (c) on the  
 15 ground of a material error of fact or law in im-  
 16 position of the penalty.

17 (B) LIMITATION.—A civil penalty may not  
 18 be refunded under subparagraph (A) later than  
 19 2 years after payment of the penalty.

20 (2) PROHIBITION ON ACTIONS FOR REFUND.—  
 21 Notwithstanding section 1346(a) of title 28, United  
 22 States Code, no action for the refund of any civil  
 23 penalty referred to in paragraph (1) may be main-  
 24 tained in any court.

25 (f) EFFECT OF OTHER CONVICTIONS.—

1           (1) DENIAL OF EXPORT PRIVILEGES.—Any per-  
2       son convicted of a violation of—

3                   (A) a provision of this Act or the Export  
4       Administration Act of 1979,

5                   (B) a provision of the International Emer-  
6       gency Economic Powers Act (50 U.S.C. 1701 et  
7       seq.),

8                   (C) section 793, 794, or 798 of title 18,  
9       United States Code,

10                  (D) section 4(b) of the Internal Security  
11       Act of 1950 (50 U.S.C. 783(b)),

12                  (E) section 38 of the Arms Export Control  
13       Act (22 U.S.C. 2778),

14                  (F) section 16 of the Trading with the  
15       Enemy Act (50 U.S.C. App. 16),

16                  (G) any regulation, license, or order issued  
17       under any provision of law listed in subpara-  
18       graph (A), (B), (C), (D), (E), or (F),

19                  (H) section 371 or 1001 of title 18, United  
20       States Code, if in connection with the export of  
21       controlled items under this Act or any regula-  
22       tion, license, or order issued under the Inter-  
23       national Emergency Economic Powers Act, or  
24       the export of items controlled under the Arms  
25       Export Control Act,

1 (I) section 175 of title 18, United States  
2 Code,

3 (J) section 229, of title 18, United States  
4 Code,

5 (K) a provision of the Atomic Energy Act  
6 (42 U.S.C. 201 et seq.),

7 (L) section 831 of title 18, United States  
8 Code, or

9 (M) section 2332a of title 18, United  
10 States Code,

11 may, at the discretion of the Secretary, be denied ex-  
12 port privileges under this Act for a period not to ex-  
13 ceed 10 years from the date of the conviction. The  
14 Secretary may also revoke any export license under  
15 this Act in which such person had an interest at the  
16 time of the conviction.

17 (2) RELATED PERSONS.—The Secretary may  
18 exercise the authority under paragraph (1) with re-  
19 spect to any person related through affiliation, own-  
20 ership, control, or position of responsibility to a per-  
21 son convicted of any violation of a law set forth in  
22 paragraph (1) upon a showing of such relationship  
23 with the convicted person. The Secretary shall make  
24 such showing only after providing notice and oppor-  
25 tunity for a hearing.

1 (g) STATUTE OF LIMITATIONS.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graph (2), a proceeding in which a civil penalty or  
4 other administrative sanction (other than a tem-  
5 porary denial order) is sought under subsection (c)  
6 may not be instituted more than 5 years after the  
7 later of the date of the alleged violation or the date  
8 of discovery of the alleged violation.

9 (2) EXCEPTION.—

10 (A) TOLLING.—In any case in which a  
11 criminal indictment alleging a violation under  
12 subsection (a) is returned within the time limits  
13 prescribed by law for the institution of such ac-  
14 tion, the limitation under paragraph (1) for  
15 bringing a proceeding to impose a civil penalty  
16 or other administrative sanction under this sec-  
17 tion shall, upon the return of the criminal in-  
18 dictment, be tolled against all persons named as  
19 a defendant.

20 (B) DURATION.—The tolling of the limita-  
21 tion with respect to a defendant under subpara-  
22 graph (A) as a result of a criminal indictment  
23 shall continue for a period of 6 months from  
24 the date on which the conviction of the defend-  
25 ant becomes final, the indictment against the

1           defendant is dismissed, or the criminal action  
2           has concluded.

3           (h) VIOLATIONS DEFINED BY REGULATION.—Noth-  
4 ing in this section shall limit the authority of the Secretary  
5 to define by regulation violations under this Act.

6           (i) CONSTRUCTION.—Nothing in subsection (c), (d),  
7 (e), (f), or (g) limits—

8           (1) the availability of other administrative or  
9           judicial remedies with respect to a violation of a pro-  
10          vision of this Act, or any regulation, order, or license  
11          issued under this Act;

12          (2) the authority to compromise and settle ad-  
13          ministrative proceedings brought with respect to any  
14          such violation; or

15          (3) the authority to compromise, remit, or miti-  
16          gate seizures and forfeitures pursuant to section  
17          1(b) of title VI of the Act of June 15, 1917 (22  
18          U.S.C. 401(b)).

19 **SEC. 604. MULTILATERAL EXPORT CONTROL REGIME VIO-**  
20 **LATION SANCTIONS.**

21          (a) IMPOSITION OF SANCTIONS.—

22           (1) IN GENERAL.—The President, subject to  
23          subsection (c), shall apply sanctions under sub-  
24          section (b) for a period of not less than 2 years and

1 not more than 5 years, if the President determines  
2 that—

3 (A) a foreign person has violated any regu-  
4 lation issued by a country to control exports for  
5 national security purposes pursuant to a multi-  
6 lateral export control regime; and

7 (B) such violation has substantially aided a  
8 country in—

9 (i) acquiring military significant capa-  
10 bilities or weapons, if the country is an ac-  
11 tual or potential adversary of the United  
12 States;

13 (ii) acquiring nuclear weapons pro-  
14 vided such country is other than the de-  
15 clared nuclear states of the People's Re-  
16 public China, the Republic of France, the  
17 Russian Federation, the United Kingdom,  
18 and the United States;

19 (iii) acquiring biological or chemical  
20 weapons; or

21 (iv) acquiring missiles.

22 (2) NOTIFICATION OF CONGRESS.—The Presi-  
23 dent shall notify Congress of each action taken  
24 under this section.

1 (b) APPLICABILITY AND FORMS OF SANCTIONS.—

2 The sanctions referred to in subsection (a) shall apply to  
3 the foreign person committing the violation, as well as to  
4 any parent, affiliate, subsidiary, and successor entity of  
5 the foreign person, and, except as provided in subsection  
6 (c), are as follows:

7 (1) A prohibition on contracting with, and the  
8 procurement of products and services from, a sanc-  
9 tioned person, by any department, agency, or instru-  
10 mentality of the United States Government.

11 (2) A prohibition on the importation into the  
12 United States of all items produced by a sanctioned  
13 person.

14 (c) EXCEPTIONS.—The President shall not apply  
15 sanctions under this section—

16 (1) in the case of procurement of defense  
17 items—

18 (A) under existing contracts or sub-  
19 contracts, including the exercise of options for  
20 production quantities to satisfy United States  
21 operational military requirements;

22 (B) if the President determines that the  
23 foreign person or other entity to which the  
24 sanctions would otherwise be applied is a sole

1 source supplier of essential defense items and  
2 no alternative supplier can be identified; or

3 (C) if the President determines that such  
4 items are essential to the national security  
5 under defense coproduction agreements;

6 (2) in any case in which such sanctions would  
7 violate United States international obligations in-  
8 cluding treaties, agreements, or understandings; or

9 (3) to—

10 (A) items provided under contracts or  
11 other binding agreements (as such terms are  
12 defined by the President in regulations) entered  
13 into before the date on which the President no-  
14 tifies Congress of the intention to impose the  
15 sanctions;

16 (B) after-market service and replacement  
17 parts including upgrades;

18 (C) component parts, but not finished  
19 products, essential to United States products or  
20 productions; or

21 (D) information and technology.

22 (d) EXCLUSION.—The President shall not apply  
23 sanctions under this section to a parent, affiliate, sub-  
24 sidiary, and successor entity of a foreign person if the  
25 President determines that—

1           (1) the parent, affiliate, subsidiary, or successor  
2           entity (as the case may be) has not knowingly vio-  
3           lated the export control regulation violated by the  
4           foreign person; and

5           (2) the government of the country with jurisdic-  
6           tion over the parent, affiliate, subsidiary, or suc-  
7           cessor entity had in effect, at the time of the viola-  
8           tion by the foreign person, an effective export con-  
9           trol system consistent with principles set forth in  
10          section 601(b)(2).

11          (e) SUBSEQUENT MODIFICATIONS OF SANCTIONS.—

12       The President may, after consultation with the Committee  
13       on Banking, Housing, and Urban Affairs of the Senate  
14       and the Committee on International Relations of the  
15       House of Representatives, limit the scope of sanctions ap-  
16       plied to a parent, affiliate, subsidiary, or successor entity  
17       of the foreign person determined to have committed the  
18       violation on account of which the sanctions were imposed,  
19       if the President determines that—

20           (1) the parent, affiliate, subsidiary, or successor  
21           entity (as the case may be) has not, on the basis of  
22           evidence available to the United States, itself vio-  
23           lated the export control regulation involved, either  
24           directly or through a course of conduct;

1           (2) the government with jurisdiction over the  
 2           parent, affiliate, subsidiary, or successor entity has  
 3           improved its export control system as measured by  
 4           the criteria set forth in section 601(b)(2); and

5           (3) the parent, affiliate, subsidiary, or successor  
 6           entity, has instituted improvements in internal con-  
 7           trols sufficient to detect and prevent violations of  
 8           the multilateral export control regime.

9   **SEC. 605. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

10       (a) VIOLATIONS BY UNITED STATES PERSONS.—

11           (1) SANCTIONS.—

12               (A) IN GENERAL.—If the President deter-  
 13               mines that a United States person knowingly—

14                   (i) exports, transfers, or otherwise en-  
 15                   gages in the trade of any item on the  
 16                   MTCR Annex, in violation of the provi-  
 17                   sions of section 38 (22 U.S.C. 2778) or  
 18                   chapter 7 of the Arms Export Control Act,  
 19                   title II or III of this Act, or any regula-  
 20                   tions or orders issued under any such pro-  
 21                   visions,

22                   (ii) conspires to or attempts to engage  
 23                   in such export, transfer, or trade, or

24                   (iii) facilitates such export, transfer,  
 25                   or trade by any other person,

1           then the President shall impose the applicable  
2           sanctions described in subparagraph (B).

3           (B) SANCTIONS DESCRIBED.—The sanc-  
4           tions which apply to a United States person  
5           under subparagraph (A) are the following:

6                   (i) If the item on the MTCR Annex  
7                   involved in the export, transfer, or trade is  
8                   missile equipment or technology within cat-  
9                   egory II of the MTCR Annex, then the  
10                  President shall deny to such United States  
11                  person, for a period of 2 years, licenses for  
12                  the transfer of missile equipment or tech-  
13                  nology controlled under this Act.

14                  (ii) If the item on the MTCR Annex  
15                  involved in the export, transfer, or trade is  
16                  missile equipment or technology within cat-  
17                  egory I of the MTCR Annex, then the  
18                  President shall deny to such United States  
19                  person, for a period of not less than 2  
20                  years, all licenses for items the export of  
21                  which is controlled under this Act.

22           (2) DISCRETIONARY SANCTIONS.—In the case  
23           of any determination referred to in paragraph (1),  
24           the Secretary may pursue any other appropriate  
25           penalties under section 603.

1           (3) WAIVER.—The President may waive the im-  
 2           position of sanctions under paragraph (1) on a per-  
 3           son with respect to an item if the President certifies  
 4           to Congress that—

5                   (A) the item is essential to the national se-  
 6                   curity of the United States; and

7                   (B) such person is a sole source supplier of  
 8                   the item, the item is not available from any al-  
 9                   ternative reliable supplier, and the need for the  
 10                  item cannot be met in a timely manner by im-  
 11                  proved manufacturing processes or technological  
 12                  developments.

13           (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-  
 14           NOLOGY BY FOREIGN PERSONS.—

15                   (1) SANCTIONS.—

16                           (A) IN GENERAL.—Subject to paragraphs  
 17                           (3) through (7), if the President determines  
 18                           that a foreign person, after the date of enact-  
 19                           ment of this section, knowingly—

20                                   (i) exports, transfers, or otherwise en-  
 21                                   gages in the trade of any MTCR equip-  
 22                                   ment or technology that contributes to the  
 23                                   design, development, or production of mis-  
 24                                   siles in a country that is not an MTCR ad-  
 25                                   herent and would be, if it were United

1 States-origin equipment or technology,  
2 subject to the jurisdiction of the United  
3 States under this Act,

4 (ii) conspires to or attempts to engage  
5 in such export, transfer, or trade, or

6 (iii) facilitates such export, transfer,  
7 or trade by any other person,

8 or if the President has made a determination  
9 with respect to a foreign person under section  
10 73(a) of the Arms Export Control Act, then the  
11 President shall impose on that foreign person  
12 the applicable sanctions under subparagraph  
13 (B).

14 (B) SANCTIONS DESCRIBED.—The sanc-  
15 tions which apply to a foreign person under  
16 subparagraph (A) are the following:

17 (i) If the item involved in the export,  
18 transfer, or trade is within category II of  
19 the MTCR Annex, then the President shall  
20 deny, for a period of 2 years, licenses for  
21 the transfer to such foreign person of mis-  
22 sile equipment or technology the export of  
23 which is controlled under this Act.

24 (ii) If the item involved in the export,  
25 transfer, or trade is within category I of

1 the MTCR Annex, then the President shall  
2 deny, for a period of not less than 2 years,  
3 licenses for the transfer to such foreign  
4 person of items the export of which is con-  
5 trolled under this Act.

6 (iii) If, in addition to actions taken  
7 under clauses (i) and (ii), the President de-  
8 termines that the export, transfer, or trade  
9 has substantially contributed to the design,  
10 development, or production of missiles in a  
11 country that is not an MTCR adherent,  
12 then the President shall prohibit, for a pe-  
13 riod of not less than 2 years, the importa-  
14 tion into the United States of products  
15 produced by that foreign person.

16 (2) INAPPLICABILITY WITH RESPECT TO MTCR  
17 ADHERENTS.—Paragraph (1) does not apply with  
18 respect to—

19 (A) any export, transfer, or trading activ-  
20 ity that is authorized by the laws of an MTCR  
21 adherent, if such authorization is not obtained  
22 by misrepresentation or fraud; or

23 (B) any export, transfer, or trade of an  
24 item to an end user in a country that is an  
25 MTCR adherent.

1           (3) EFFECT OF ENFORCEMENT ACTIONS BY  
2 MTCR ADHERENTS.—Sanctions set forth in para-  
3 graph (1) may not be imposed under this subsection  
4 on a person with respect to acts described in such  
5 paragraph or, if such sanctions are in effect against  
6 a person on account of such acts, such sanctions  
7 shall be terminated, if an MTCR adherent is taking  
8 judicial or other enforcement action against that  
9 person with respect to such acts, or that person has  
10 been found by the government of an MTCR adher-  
11 ent to be innocent of wrongdoing with respect to  
12 such acts.

13           (4) ADVISORY OPINIONS.—The Secretary, in  
14 consultation with the Secretary of State and the  
15 Secretary of Defense, may, upon the request of any  
16 person, issue an advisory opinion to that person as  
17 to whether a proposed activity by that person would  
18 subject that person to sanctions under this sub-  
19 section. Any person who relies in good faith on such  
20 an advisory opinion which states that the proposed  
21 activity would not subject a person to such sanc-  
22 tions, and any person who thereafter engages in  
23 such activity, may not be made subject to such sanc-  
24 tions on account of such activity.

25           (5) WAIVER AND REPORT TO CONGRESS.—

1 (A) WAIVER.—In any case other than one  
2 in which an advisory opinion has been issued  
3 under paragraph (4) stating that a proposed ac-  
4 tivity would not subject a person to sanctions  
5 under this subsection, the President may waive  
6 the application of paragraph (1) to a foreign  
7 person if the President determines that such  
8 waiver is essential to the national security of  
9 the United States.

10 (B) REPORT TO CONGRESS.—In the event  
11 that the President decides to apply the waiver  
12 described in subparagraph (A), the President  
13 shall so notify Congress not less than 20 work-  
14 ing days before issuing the waiver. Such notifi-  
15 cation shall include a report fully articulating  
16 the rationale and circumstances which led the  
17 President to apply the waiver.

18 (6) ADDITIONAL WAIVER.—The President may  
19 waive the imposition of sanctions under paragraph  
20 (1) on a person with respect to a product or service  
21 if the President certifies to the Congress that—

22 (A) the product or service is essential to  
23 the national security of the United States; and

24 (B) such person is a sole source supplier of  
25 the product or service, the product or service is

1 not available from any alternative reliable sup-  
2 plier, and the need for the product or service  
3 cannot be met in a timely manner by improved  
4 manufacturing processes or technological devel-  
5 opments.

6 (7) EXCEPTIONS.—The President shall not  
7 apply the sanction under this subsection prohibiting  
8 the importation of the products of a foreign  
9 person—

10 (A) in the case of procurement of defense  
11 articles or defense services—

12 (i) under existing contracts or sub-  
13 contracts, including the exercise of options  
14 for production quantities to satisfy require-  
15 ments essential to the national security of  
16 the United States;

17 (ii) if the President determines that  
18 the person to which the sanctions would be  
19 applied is a sole source supplier of the de-  
20 fense articles and services, that the defense  
21 articles or services are essential to the na-  
22 tional security of the United States, and  
23 that alternative sources are not readily or  
24 reasonably available; or

1 (iii) if the President determines that  
 2 such articles or services are essential to the  
 3 national security of the United States  
 4 under defense coproduction agreements or  
 5 NATO Programs of Cooperation;

6 (B) to products or services provided under  
 7 contracts entered into before the date on which  
 8 the President publishes his intention to impose  
 9 the sanctions; or

10 (C) to—

11 (i) spare parts,

12 (ii) component parts, but not finished  
 13 products, essential to United States prod-  
 14 ucts or production,

15 (iii) routine services and maintenance  
 16 of products, to the extent that alternative  
 17 sources are not readily or reasonably avail-  
 18 able, or

19 (iv) information and technology essen-  
 20 tial to United States products or produc-  
 21 tion.

22 (c) DEFINITIONS.—In this section:

23 (1) MISSILE.—The term “missile” means a cat-  
 24 egory I system as defined in the MTCR Annex, and  
 25 any other unmanned delivery system of similar capa-

1 bility, as well as the specially designed production  
2 facilities for these systems.

3 (2) MISSILE TECHNOLOGY CONTROL REGIME;  
4 MTCR.—The term “Missile Technology Control Re-  
5 gime” or “MTCR” means the policy statement, be-  
6 tween the United States, the United Kingdom, the  
7 Federal Republic of Germany, France, Italy, Can-  
8 ada, and Japan, announced on April 16, 1987, to re-  
9 strict sensitive missile-relevant transfers based on  
10 the MTCR Annex, and any amendments thereto.

11 (3) MTCR ADHERENT.—The term “MTCR ad-  
12 herent” means a country that participates in the  
13 MTCR or that, pursuant to an international under-  
14 standing to which the United States is a party, con-  
15 trols MTCR equipment or technology in accordance  
16 with the criteria and standards set forth in the  
17 MTCR.

18 (4) MTCR ANNEX.—The term “MTCR Annex”  
19 means the Guidelines and Equipment and Tech-  
20 nology Annex of the MTCR, and any amendments  
21 thereto.

22 (5) MISSILE EQUIPMENT OR TECHNOLOGY;  
23 MTCR EQUIPMENT OR TECHNOLOGY.—The terms  
24 “missile equipment or technology” and “MTCR

equipment or technology” mean those items listed in category I or category II of the MTCR Annex.

(6) FOREIGN PERSON.—The term “foreign person” means any person other than a United States person.

(7) PERSON.—

(A) IN GENERAL.—The term “person” means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(B) IDENTIFICATION IN CERTAIN CASES.—

In the case of countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A), the term “person” means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment.

1 (8) OTHERWISE ENGAGED IN THE TRADE OF.—

2 The term “otherwise engaged in the trade of”  
 3 means, with respect to a particular export or trans-  
 4 fer, to be a freight forwarder or designated export-  
 5 ing agent, or a consignee or end user of the item to  
 6 be exported or transferred.

7 **SEC. 606. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**  
 8 **LIFERATION SANCTIONS.**

9 (a) IMPOSITION OF SANCTIONS.—

10 (1) DETERMINATION BY THE PRESIDENT.—Ex-  
 11 cept as provided in subsection (b)(2), the President  
 12 shall impose both of the sanctions described in sub-  
 13 section (c) if the President determines that a foreign  
 14 person, on or after the date of enactment of this sec-  
 15 tion, has knowingly and materially contributed—

16 (A) through the export from the United  
 17 States of any item that is subject to the juris-  
 18 diction of the United States under this Act, or

19 (B) through the export from any other  
 20 country of any item that would be, if it were a  
 21 United States item, subject to the jurisdiction  
 22 of the United States under this Act,

23 to the efforts by any foreign country, project, or en-  
 24 tity described in paragraph (2) to use, develop,

1 produce, stockpile, or otherwise acquire chemical or  
2 biological weapons.

3 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-  
4 CEIVING ASSISTANCE.—Paragraph (1) applies in the  
5 case of—

6 (A) any foreign country that the President  
7 determines has, at any time after the date of  
8 enactment of this Act—

9 (i) used chemical or biological weap-  
10 ons in violation of international law;

11 (ii) used lethal chemical or biological  
12 weapons against its own nationals; or

13 (iii) made substantial preparations to  
14 engage in the activities described in clause  
15 (i) or (ii);

16 (B) any foreign country whose government  
17 is determined for purposes of section 310 to be  
18 a government that has repeatedly provided sup-  
19 port for acts of international terrorism; or

20 (C) any other foreign country, project, or  
21 entity designated by the President for purposes  
22 of this section.

23 (3) PERSONS AGAINST WHICH SANCTIONS ARE  
24 TO BE IMPOSED.—Sanctions shall be imposed pursu-  
25 ant to paragraph (1) on—

1 (A) the foreign person with respect to  
2 which the President makes the determination  
3 described in that paragraph;

4 (B) any successor entity to that foreign  
5 person;

6 (C) any foreign person that is a parent or  
7 subsidiary of that foreign person if that parent  
8 or subsidiary knowingly assisted in the activities  
9 which were the basis of that determination; and

10 (D) any foreign person that is an affiliate  
11 of that foreign person if that affiliate knowingly  
12 assisted in the activities which were the basis of  
13 that determination and if that affiliate is con-  
14 trolled in fact by that foreign person.

15 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-  
16 EIGN GOVERNMENT OF JURISDICTION.—

17 (1) CONSULTATIONS.—If the President makes  
18 the determinations described in subsection (a)(1)  
19 with respect to a foreign person, Congress urges the  
20 President to initiate consultations immediately with  
21 the government with primary jurisdiction over that  
22 foreign person with respect to the imposition of  
23 sanctions pursuant to this section.

24 (2) ACTIONS BY GOVERNMENT OF JURISDIC-  
25 TION.—In order to pursue such consultations with

1       that government, the President may delay imposition  
2       of sanctions pursuant to this section for a period of  
3       up to 90 days. Following the consultations, the  
4       President shall impose sanctions unless the Presi-  
5       dent determines and certifies to Congress that gov-  
6       ernment has taken specific and effective actions, in-  
7       cluding appropriate penalties, to terminate the in-  
8       volvement of the foreign person in the activities de-  
9       scribed in subsection (a)(1). The President may  
10      delay imposition of sanctions for an additional pe-  
11      riod of up to 90 days if the President determines  
12      and certifies to Congress that government is in the  
13      process of taking the actions described in the pre-  
14      ceding sentence.

15           (3) REPORT TO CONGRESS.—The President  
16      shall report to Congress, not later than 90 days  
17      after making a determination under subsection  
18      (a)(1), on the status of consultations with the appro-  
19      priate government under this subsection, and the  
20      basis for any determination under paragraph (2) of  
21      this subsection that such government has taken spe-  
22      cific corrective actions.

23      (c) SANCTIONS.—

24           (1) DESCRIPTION OF SANCTIONS.—The sanc-  
25      tions to be imposed pursuant to subsection (a)(1)

1 are, except as provided in paragraph (2) of this sub-  
2 section, the following:

3 (A) PROCUREMENT SANCTION.—The  
4 United States Government shall not procure, or  
5 enter into any contract for the procurement of,  
6 any goods or services from any person described  
7 in subsection (a)(3).

8 (B) IMPORT SANCTIONS.—The importation  
9 into the United States of products produced by  
10 any person described in subsection (a)(3) shall  
11 be prohibited.

12 (2) EXCEPTIONS.—The President shall not be  
13 required to apply or maintain sanctions under this  
14 section—

15 (A) in the case of procurement of defense  
16 articles or defense services—

17 (i) under existing contracts or sub-  
18 contracts, including the exercise of options  
19 for production quantities to satisfy United  
20 States operational military requirements;

21 (ii) if the President determines that  
22 the person or other entity to which the  
23 sanctions would otherwise be applied is a  
24 sole source supplier of the defense articles  
25 or services, that the defense articles or

1 services are essential, and that alternative  
2 sources are not readily or reasonably avail-  
3 able; or

4 (iii) if the President determines that  
5 such articles or services are essential to the  
6 national security under defense coproduc-  
7 tion agreements;

8 (B) to products or services provided under  
9 contracts entered into before the date on which  
10 the President publishes his intention to impose  
11 sanctions;

12 (C) to—

13 (i) spare parts,

14 (ii) component parts, but not finished  
15 products, essential to United States prod-  
16 ucts or production, or

17 (iii) routine servicing and mainte-  
18 nance of products, to the extent that alter-  
19 native sources are not readily or reason-  
20 ably available;

21 (D) to information and technology essen-  
22 tial to United States products or production; or

23 (E) to medical or other humanitarian  
24 items.

1 (d) TERMINATION OF SANCTIONS.—The sanctions  
2 imposed pursuant to this section shall apply for a period  
3 of at least 12 months following the imposition of sanctions  
4 and shall cease to apply thereafter only if the President  
5 determines and certifies to the Congress that reliable in-  
6 formation indicates that the foreign person with respect  
7 to which the determination was made under subsection  
8 (a)(1) has ceased to aid or abet any foreign government,  
9 project, or entity in its efforts to acquire chemical or bio-  
10 logical weapons capability as described in that subsection.

11 (e) WAIVER.—

12 (1) CRITERION FOR WAIVER.—The President  
13 may waive the application of any sanction imposed  
14 on any person pursuant to this section, after the end  
15 of the 12-month period beginning on the date on  
16 which that sanction was imposed on that person, if  
17 the President determines and certifies to Congress  
18 that such waiver is important to the national secu-  
19 rity interests of the United States.

20 (2) NOTIFICATION OF AND REPORT TO CON-  
21 GRESS.—If the President decides to exercise the  
22 waiver authority provided in paragraph (1), the  
23 President shall so notify the Congress not less than  
24 20 days before the waiver takes effect. Such notifica-  
25 tion shall include a report fully articulating the ra-

1       tionale and circumstances which led the President to  
2       exercise the waiver authority.

3       (f) DEFINITION OF FOREIGN PERSON.—For the pur-  
4       poses of this section, the term “foreign person” means—

5           (1) an individual who is not a citizen of the  
6       United States or an alien admitted for permanent  
7       residence to the United States; or

8           (2) a corporation, partnership, or other entity  
9       which is created or organized under the laws of a  
10      foreign country or which has its principal place of  
11      business outside the United States.

12   **SEC. 607. ENFORCEMENT.**

13      (a) GENERAL AUTHORITY AND DESIGNATION.—

14          (1) POLICY GUIDANCE ON ENFORCEMENT.—

15      The Secretary, in consultation with the Secretary of  
16      the Treasury and the heads of other departments  
17      and agencies that the Secretary considers appro-  
18      priate, shall be responsible for providing policy guid-  
19      ance on the enforcement of this Act.

20          (2) GENERAL AUTHORITIES.—

21            (A) EXERCISE OF AUTHORITY.—To the ex-  
22      tent necessary or appropriate to the enforce-  
23      ment of this Act, officers or employees of the  
24      Department designated by the Secretary, offi-  
25      cers and employees of the United States Cus-

1           toms Service designated by the Commissioner of  
2           Customs, and officers and employees of any  
3           other department or agency designated by the  
4           head of the department or agency, may exercise  
5           the enforcement authority under paragraph (3).

6           (B) CUSTOMS SERVICE.—In carrying out  
7           enforcement authority under paragraph (3), the  
8           Commissioner of Customs and employees of the  
9           United States Customs Services designated by  
10          the Commissioner may make investigations  
11          within or outside the United States and at  
12          ports of entry into or exit from the United  
13          States where officers of the United States Customs  
14          Service are authorized by law to carry out  
15          law enforcement responsibilities. Subject to  
16          paragraph (3), the United States Customs  
17          Service is authorized, in the enforcement of this  
18          Act, to search, detain (after search), and seize  
19          commodities or technology at the ports of entry  
20          into or exit from the United States where officers  
21          of the United States Customs Service are  
22          authorized by law to conduct searches, deten-  
23          tions, and seizures, and at the places outside  
24          the United States where the United States Customs  
25          Service, pursuant to agreement or other

1 arrangement with other countries, is authorized  
2 to perform enforcement activities.

3 (C) OTHER EMPLOYEES.—In carrying out  
4 enforcement authority under paragraph (3), the  
5 Secretary and officers and employees of the De-  
6 partment designated by the Secretary may  
7 make investigations within the United States,  
8 and may conduct, outside the United States,  
9 pre-license and post-shipment verifications of  
10 controlled items and investigations in the en-  
11 forcement of section 602. The Secretary and of-  
12 ficers and employees of the Department des-  
13 ignated by the Secretary are authorized to  
14 search, detain (after search), and seize items at  
15 places within the United States other than  
16 ports referred to in subparagraph (B). The  
17 search, detention (after search), or seizure of  
18 items at the ports and places referred to in sub-  
19 paragraph (B) may be conducted by officers  
20 and employees of the Department only with the  
21 concurrence of the Commissioner of Customs or  
22 a person designated by the Commissioner.

23 (D) AGREEMENTS AND ARRANGEMENTS.—  
24 The Secretary and the Commissioner of Cus-  
25 toms may enter into agreements and arrange-

1           ments for the enforcement of this Act, including  
2           foreign investigations and information ex-  
3           change.

4           (3) SPECIFIC AUTHORITIES.—

5                 (A) ACTIONS BY ANY DESIGNATED PER-  
6           SONNEL.—Any officer or employee designated  
7           under paragraph (2), in carrying out the en-  
8           forcement authority under this Act, may do the  
9           following:

10                   (i) Make investigations of, obtain in-  
11                   formation from, make inspection of any  
12                   books, records, or reports (including any  
13                   writings required to be kept by the Sec-  
14                   retary), premises, or property of, and take  
15                   the sworn testimony of, any person.

16                   (ii) Administer oaths or affirmations,  
17                   and by subpoena require any person to ap-  
18                   pear and testify or to appear and produce  
19                   books, records, and other writings, or both.  
20                   In the case of contumacy by, or refusal to  
21                   obey a subpoena issued to, any such per-  
22                   son, a district court of the United States,  
23                   on request of the Attorney General and  
24                   after notice to any such person and a hear-  
25                   ing, shall have jurisdiction to issue an

1 order requiring such person to appear and  
2 give testimony or to appear and produce  
3 books, records, and other writings, or both.  
4 Any failure to obey such order of the court  
5 may be punished by such court as a con-  
6 tempt thereof. The attendance of witnesses  
7 and the production of documents provided  
8 for in this clause may be required from  
9 any State, the District of Columbia, or in  
10 any territory of the United States at any  
11 designated place. Witnesses subpoenaed  
12 under this subsection shall be paid the  
13 same fees and mileage allowance as paid  
14 witnesses in the district courts of the  
15 United States.

16 (B) ACTIONS BY OFFICE OF EXPORT EN-  
17 FORCEMENT AND CUSTOMS SERVICE PER-  
18 SONNEL.—

19 (i) OFFICE OF EXPORT ENFORCE-  
20 MENT AND CUSTOMS SERVICE PER-  
21 SONNEL.—Any officer or employee of the  
22 Office of Export Enforcement of the De-  
23 partment of Commerce (in this Act re-  
24 ferred to as “OEE”) who is designated by  
25 the Secretary under paragraph (2), and

1 any officer or employee of the United  
2 States Customs Service who is designated  
3 by the Commissioner of Customs under  
4 paragraph (2), may do the following in  
5 carrying out the enforcement authority  
6 under this Act:

7 (I) Execute any warrant or other  
8 process issued by a court or officer of  
9 competent jurisdiction with respect to  
10 the enforcement of this Act.

11 (II) Make arrests without war-  
12 rant for any violation of this Act com-  
13 mitted in his or her presence or view,  
14 or if the officer or employee has prob-  
15 able cause to believe that the person  
16 to be arrested has committed, is com-  
17 mitting, or is about to commit such a  
18 violation.

19 (III) Carry firearms.

20 (ii) OEE PERSONNEL.—Any officer  
21 and employee of the OEE designated by  
22 the Secretary under paragraph (2) shall  
23 exercise the authority set forth in clause (i)  
24 pursuant to guidelines approved by the At-  
25 torney General.

1 (C) OTHER ACTIONS BY CUSTOMS SERVICE  
2 PERSONNEL.—Any officer or employee of the  
3 United States Customs Service designated by  
4 the Commissioner of Customs under paragraph  
5 (2) may do the following in carrying out the en-  
6 forcement authority under this Act:

7 (i) Stop, search, and examine a vehi-  
8 cle, vessel, aircraft, or person on which or  
9 whom the officer or employee has reason-  
10 able cause to suspect there is any item  
11 that has been, is being, or is about to be  
12 exported from or transited through the  
13 United States in violation of this Act.

14 (ii) Detain and search any package or  
15 container in which the officer or employee  
16 has reasonable cause to suspect there is  
17 any item that has been, is being, or is  
18 about to be exported from or transited  
19 through the United States in violation of  
20 this Act.

21 (iii) Detain (after search) or seize any  
22 item, for purposes of securing for trial or  
23 forfeiture to the United States, on or  
24 about such vehicle, vessel, aircraft, or per-  
25 son or in such package or container, if the

1           officer or employee has probable cause to  
2           believe the item has been, is being, or is  
3           about to be exported from or transited  
4           through the United States in violation of  
5           this Act.

6           (4) OTHER AUTHORITIES NOT AFFECTED.—The  
7           authorities conferred by this section are in addition  
8           to any authorities conferred under other laws.

9           (b) FORFEITURE.—

10           (1) IN GENERAL.—Any tangible items lawfully  
11           seized under subsection (a) by designated officers or  
12           employees shall be subject to forfeiture to the United  
13           States.

14           (2) APPLICABLE LAWS.—Those provisions of  
15           law relating to—

16                   (A) the seizure, summary and judicial for-  
17                   feiture, and condemnation of property for viola-  
18                   tions of the customs laws;

19                   (B) the disposition of such property or the  
20                   proceeds from the sale thereof;

21                   (C) the remission or mitigation of such for-  
22                   feitures; and

23                   (D) the compromise of claims,  
24           shall apply to seizures and forfeitures incurred, or  
25           alleged to have been incurred, under the provisions

1 of this subsection, insofar as applicable and not in-  
2 consistent with this Act.

3 (3) FORFEITURES UNDER CUSTOMS LAWS.—

4 Duties that are imposed upon the customs officer or  
5 any other person with respect to the seizure and for-  
6 feiture of property under the customs laws may be  
7 performed with respect to seizures and forfeitures of  
8 property under this subsection by the Secretary or  
9 any officer or employee of the Department that may  
10 be authorized or designated for that purpose by the  
11 Secretary, or, upon the request of the Secretary, by  
12 any other agency that has authority to manage and  
13 dispose of seized property.

14 (c) REFERRAL OF CASES.—All cases involving viola-  
15 tions of this Act shall be referred to the Secretary for pur-  
16 poses of determining civil penalties and administrative  
17 sanctions under section 603 or to the Attorney General  
18 for criminal action in accordance with this Act or to both  
19 the Secretary and the Attorney General.

20 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

21 (1) USE OF FUNDS.—With respect to any un-  
22 dercover investigative operation conducted by the  
23 OEE that is necessary for the detection and pros-  
24 ecution of violations of this Act—

1 (A) funds made available for export en-  
2 forcement under this Act may be used to pur-  
3 chase property, buildings, and other facilities,  
4 and to lease equipment, conveyances, and space  
5 within the United States, without regard to sec-  
6 tions 1341 and 3324 of title 31, United States  
7 Code, the third undesignated paragraph under  
8 the heading of “miscellaneous” of the Act of  
9 March 3, 1877, (40 U.S.C. 34), sections  
10 3732(a) and 3741 of the Revised Statutes of  
11 the United States (41 U.S.C. 11(a) and 22),  
12 and subsections (a) and (c) of section 304, and  
13 section 305 of the Federal Property and Ad-  
14 ministrative Services Act of 1949 (41 U.S.C.  
15 254 (a) and (c) and 255);

16 (B) funds made available for export en-  
17 forcement under this Act may be used to estab-  
18 lish or to acquire proprietary corporations or  
19 business entities as part of an undercover oper-  
20 ation, and to operate such corporations or busi-  
21 ness entities on a commercial basis, without re-  
22 gard to sections 1341, 3324, and 9102 of title  
23 31, United States Code;

24 (C) funds made available for export en-  
25 forcement under this Act and the proceeds from

1           undercover operations may be deposited in  
2           banks or other financial institutions without re-  
3           gard to the provisions of section 648 of title 18,  
4           United States Code, and section 3302 of title  
5           31, United States Code; and

6           (D) the proceeds from undercover oper-  
7           ations may be used to offset necessary and rea-  
8           sonable expenses incurred in such operations  
9           without regard to the provisions of section 3302  
10          of title 31, United States Code,

11       if the Director of OEE (or an officer or employee  
12       designated by the Director) certifies, in writing, that  
13       the action authorized by subparagraph (A), (B), (C),  
14       or (D) for which the funds would be used is nec-  
15       essary for the conduct of the undercover operation.

16       (2) DISPOSITION OF BUSINESS ENTITIES.—If a  
17       corporation or business entity established or ac-  
18       quired as part of an undercover operation has a net  
19       value of more than \$250,000 and is to be liquidated,  
20       sold, or otherwise disposed of, the Director of OEE  
21       shall report the circumstances to the Secretary and  
22       the Comptroller General of the United States as  
23       much in advance of such disposition as the Director  
24       of the OEE (or the Director's designee) determines  
25       is practicable. The proceeds of the liquidation, sale,

1 or other disposition, after obligations incurred by the  
2 corporation or business enterprise are met, shall be  
3 deposited in the Treasury of the United States as  
4 miscellaneous receipts. Any property or equipment  
5 purchased pursuant to paragraph (1) may be re-  
6 tained for subsequent use in undercover operations  
7 under this section. When such property or equip-  
8 ment is no longer needed, it shall be considered sur-  
9 plus and disposed of as surplus government prop-  
10 erty.

11 (3) DEPOSIT OF PROCEEDS.—As soon as the  
12 proceeds from an OEE undercover investigative op-  
13 eration with respect to which an action is authorized  
14 and carried out under this subsection are no longer  
15 needed for the conduct of such operation, the pro-  
16 ceeds or the balance of the proceeds remaining at  
17 the time shall be deposited into the Treasury of the  
18 United States as miscellaneous receipts.

19 (4) AUDIT AND REPORT.—

20 (A) AUDIT.—The Director of OEE shall  
21 conduct a detailed financial audit of each closed  
22 OEE undercover investigative operation and  
23 shall submit the results of the audit in writing  
24 to the Secretary. Not later than 180 days after  
25 an undercover operation is closed, the Secretary

1 shall submit to Congress a report on the results  
2 of the audit.

3 (B) REPORT.—The Secretary shall submit  
4 annually to Congress a report, which may be in-  
5 cluded in the annual report under section 801,  
6 specifying the following information:

7 (i) The number of undercover inves-  
8 tigative operations pending as of the end of  
9 the period for which such report is sub-  
10 mitted.

11 (ii) The number of undercover inves-  
12 tigative operations commenced in the 1-  
13 year period preceding the period for which  
14 such report is submitted.

15 (iii) The number of undercover inves-  
16 tigative operations closed in the 1-year pe-  
17 riod preceding the period for which such  
18 report is submitted and, with respect to  
19 each such closed undercover operation, the  
20 results obtained and any civil claims made  
21 with respect to the operation.

22 (5) DEFINITIONS.—For purposes of paragraph

23 (4)—

24 (A) the term “closed”, with respect to an  
25 undercover investigative operation, refers to the

1 earliest point in time at which all criminal pro-  
2 ceedings (other than appeals) pursuant to the  
3 investigative operation are concluded, or covert  
4 activities pursuant to such operation are con-  
5 cluded, whichever occurs later; and

6 (B) the terms “undercover investigative  
7 operation” and “undercover operation” mean  
8 any undercover investigative operation con-  
9 ducted by the OEE—

10 (i) in which the gross receipts (exclud-  
11 ing interest earned) exceed \$25,000, or ex-  
12 penditures (other than expenditures for  
13 salaries of employees) exceed \$75,000, and

14 (ii) which is exempt from section 3302  
15 or 9102 of title 31, United States Code,  
16 except that clauses (i) and (ii) shall not  
17 apply with respect to the report to Con-  
18 gress required by paragraph (4)(B).

19 (e) WIRETAPS.—

20 (1) AUTHORITY.—Interceptions of communica-  
21 tions in accordance with section 2516 of title 18,  
22 United States Code, are authorized to further the  
23 enforcement of this Act.

1           (2)     CONFORMING     AMENDMENT.—Section  
2     2516(1) of title 18, United States Code, is amended  
3     by adding at the end the following:

4                     “(q)(i) any violation of, or conspiracy to  
5             violate, the Export Administration Act of 1999  
6             or the Export Administration Act of 1979.”.

7     (f) POST-SHIPMENT VERIFICATION.—

8             (1) IN GENERAL.—The Secretary shall target  
9     post-shipment verifications to exports involving the  
10    greatest risk to national security including, but not  
11    limited to, exports of high performance computers.

12            (2) REPEAL.—Section 1213 of the National  
13    Defense Authorization Act for Fiscal Year 1998 is  
14    repealed.

15    (g)    REFUSAL    TO    ALLOW    POST-SHIPMENT  
16    VERIFICATION.—

17            (1) IN GENERAL.—If an end-user refuses to  
18    allow post-shipment verification of a controlled item,  
19    the Secretary shall deny a license for the export of  
20    any controlled item to such end-user until such post-  
21    shipment verification occurs.

22            (2) RELATED PERSONS.—The Secretary may  
23    exercise the authority under paragraph (1) with re-  
24    spect to any person related through affiliation, own-  
25    ership, control, or position of responsibility, to any

1 end-user refusing to allow post-shipment verification  
2 of a controlled item.

3 (3) REFUSAL BY COUNTRY.—If the country in  
4 which the end-user is located refuses to allow post-  
5 shipment verification of a controlled item, the Sec-  
6 retary may deny a license for the export of that item  
7 or any substantially identical or directly competitive  
8 item or class of items to all end-users in that coun-  
9 try until such post-shipment verification is allowed.

10 (h) AWARD OF COMPENSATION; PATRIOT PROVI-  
11 SION.—

12 (1) IN GENERAL.—If—

13 (A) any person, who is not an employee or  
14 officer of the United States, furnishes to a  
15 United States attorney, to the Secretary of the  
16 Treasury or the Secretary, or to appropriate of-  
17 ficials in the Department of the Treasury or the  
18 Department of Commerce, original information  
19 concerning a violation of this Act or any regula-  
20 tion, order, or license issued under this Act,  
21 which is being, or has been, perpetrated or con-  
22 templated by any other person, and

23 (B) such information leads to the recovery  
24 of any criminal fine, civil penalty, or forfeiture,

1 the Secretary may award and pay such person an  
2 amount that does not exceed 25 percent of the net  
3 amount of the criminal fine or civil penalty recovered  
4 or the amount forfeited.

5 (2) DOLLAR LIMITATION.—The amount award-  
6 ed and paid to any person under this section may  
7 not exceed \$250,000 for any case.

8 (3) SOURCE OF PAYMENT.—The amount paid  
9 under this section shall be paid out of any penalties,  
10 forfeitures, or appropriated funds.

11 (i) FREIGHT FORWARDERS BEST PRACTICES PRO-  
12 GRAM AUTHORIZATION.—There is authorized to be appro-  
13 priated for the Department of Commerce \$3,500,000 and  
14 such sums as may be necessary to hire 20 additional em-  
15 ployees to assist United States freight forwarders and  
16 other interested parties in developing and implementing,  
17 on a voluntary basis, a “best practices” program to ensure  
18 that exports of controlled items are undertaken in compli-  
19 ance with this Act.

20 (j) END-USE VERIFICATION AUTHORIZATION.—

21 (1) IN GENERAL.—There is authorized to be  
22 appropriated for the Department of Commerce  
23 \$4,500,000 and such sums as may be necessary to  
24 hire 10 additional overseas investigators to be posted  
25 in the People’s Republic of China, the Russian Fed-

1       eration, the Hong Kong Special Administrative Re-  
2       gion, the Republic of India, Singapore, Egypt, and  
3       Taiwan, or any other place the Secretary deems ap-  
4       propriate, for the purpose of verifying the end use  
5       of high-risk, dual-use technology.

6           (2) REPORT.—Not later than 2 years after the  
7       date of enactment of this Act and annually there-  
8       after, the Department shall, in its annual report to  
9       Congress on export controls, include a report on the  
10      effectiveness of the end-use verification activities au-  
11      thorized under subsection (a). The report shall in-  
12      clude the following information:

13           (A) The activities of the overseas investiga-  
14      tors of the Department.

15           (B) The types of goods and technologies  
16      that were subject to end-use verification.

17           (C) The ability of the Department's inves-  
18      tigators to detect the illegal transfer of high  
19      risk, dual-use goods and technologies.

20      (k)   ENHANCED COOPERATION WITH UNITED  
21   STATES CUSTOMS SERVICE.—Consistent with the pur-  
22   poses of this Act, the Secretary is authorized to undertake,  
23   in cooperation with the United States Customs Service,  
24   such measures as may be necessary or required to enhance

1 the ability of the United States to detect unlawful exports  
2 and to enforce violations of this Act.

3 (l) REFERENCE TO ENFORCEMENT.—For purposes  
4 of this section, a reference to the enforcement of this Act  
5 or to a violation of this Act includes a reference to the  
6 enforcement or a violation of any regulation, license, or  
7 order issued under this Act.

8 (m) AUTHORIZATION FOR EXPORT LICENSING AND  
9 ENFORCEMENT COMPUTER SYSTEM.—There is author-  
10 ized to be appropriated for the Department \$5,000,000  
11 and such other sums as may be necessary for planning,  
12 design, and procurement of a computer system to replace  
13 the Department's primary export licensing and computer  
14 enforcement system.

15 **SEC. 608. ADMINISTRATIVE PROCEDURE.**

16 (a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-  
17 DURE.—Except as provided in this section, the functions  
18 exercised under this Act are excluded from the operation  
19 of sections 551, 553 through 559, and 701 through 706  
20 of title 5, United States Code.

21 (b) PROCEDURES RELATING TO CIVIL PENALTIES  
22 AND SANCTIONS.—

23 (1) ADMINISTRATIVE PROCEDURES.—Any ad-  
24 ministrative sanction imposed under section 603  
25 may be imposed only after notice and opportunity

1       for an agency hearing on the record in accordance  
2       with sections 554 through 557 of title 5, United  
3       States Code. The imposition of any such administra-  
4       tive sanction shall be subject to judicial review in ac-  
5       cordance with sections 701 through 706 of title 5,  
6       United States Code.

7               (2) AVAILABILITY OF CHARGING LETTER.—Any  
8       charging letter or other document initiating adminis-  
9       trative proceedings for the imposition of sanctions  
10      for violations of the regulations issued under section  
11      602 shall be made available for public inspection and  
12      copying.

13      (c) COLLECTION.—If any person fails to pay a civil  
14      penalty imposed under section 603, the Secretary may ask  
15      the Attorney General to commence a civil action in an ap-  
16      propriate district court of the United States to recover the  
17      amount imposed (plus interest at currently prevailing  
18      rates from the date of the final order). No such action  
19      may be commenced more than 5 years after the order im-  
20      posing the civil penalty becomes final. In such an action,  
21      the validity, amount, and appropriateness of such penalty  
22      shall not be subject to review.

23      (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

24               (1) GROUNDS FOR IMPOSITION.—In any case in  
25      which there is reasonable cause to believe that a per-

1 son is engaged in or is about to engage in any act  
2 or practice which constitutes or would constitute a  
3 violation of this Act, or any regulation, order, or li-  
4 cense issued under this Act, including any diversion  
5 of goods or technology from an authorized end use  
6 or end user, and in any case in which a criminal in-  
7 dictment has been returned against a person alleging  
8 a violation of this Act or any of the statutes listed  
9 in section 603, the Secretary may, without a hear-  
10 ing, issue an order temporarily denying that person's  
11 United States export privileges (hereafter in this  
12 subsection referred to as a "temporary denial  
13 order"). A temporary denial order shall be effective  
14 for such period (not in excess of 180 days) as the  
15 Secretary specifies in the order, but may be renewed  
16 by the Secretary, following notice and an oppor-  
17 tunity for a hearing, for additional periods of not  
18 more than 180 days each.

19 (2) ADMINISTRATIVE APPEALS.—The person or  
20 persons subject to the issuance or renewal of a tem-  
21 porary denial order may appeal the issuance or re-  
22 newal of the temporary denial order, supported by  
23 briefs and other material, to an administrative law  
24 judge who shall, within 15 working days after the  
25 appeal is filed, issue a decision affirming, modifying,

1 or vacating the temporary denial order. The tem-  
2 porary denial order shall be affirmed if it is shown  
3 that—

4 (A) there is reasonable cause to believe  
5 that the person subject to the order is engaged  
6 in or is about to engage in any act or practice  
7 that constitutes or would constitute a violation  
8 of this Act, or any regulation, order, or license  
9 issued under this Act; or

10 (B) a criminal indictment has been re-  
11 turned against the person subject to the order  
12 alleging a violation of this Act or any of the  
13 statutes listed in section 603.

14 The decision of the administrative law judge shall be  
15 final unless, within 10 working days after the date  
16 of the administrative law judge's decision, an appeal  
17 is filed with the Secretary. On appeal, the Secretary  
18 shall either affirm, modify, reverse, or vacate the de-  
19 cision of the administrative law judge by written  
20 order within 10 working days after receiving the ap-  
21 peal. The written order of the Secretary shall be  
22 final and is not subject to judicial review, except as  
23 provided in paragraph (3). The materials submitted  
24 to the administrative law judge and the Secretary

1 shall constitute the administrative record for pur-  
2 poses of review by the court.

3 (3) COURT APPEALS.—An order of the Sec-  
4 retary affirming, in whole or in part, the issuance or  
5 renewal of a temporary denial order may, within 15  
6 days after the order is issued, be appealed by a per-  
7 son subject to the order to the United States Court  
8 of Appeals for the District of Columbia Circuit,  
9 which shall have the jurisdiction of the appeal. The  
10 court may review only those issues necessary to de-  
11 termine whether the issuance of the temporary de-  
12 nial order was based on reasonable cause to believe  
13 that the person subject to the order was engaged in  
14 or was about to engage in any act or practice that  
15 constitutes or would constitute a violation of this  
16 title, or any regulation, order, or license issued  
17 under this Act, or whether a criminal indictment has  
18 been returned against the person subject to the  
19 order alleging a violation of this Act or of any of the  
20 statutes listed in section 603. The court shall vacate  
21 the Secretary's order if the court finds that the Sec-  
22 retary's order is arbitrary, capricious, an abuse of  
23 discretion, or otherwise not in accordance with law.

1     **TITLE VII—EXPORT CONTROL**  
2     **AUTHORITY AND REGULATIONS**

3     **SEC. 701. EXPORT CONTROL AUTHORITY AND REGULA-**  
4             **TIONS.**

5         (a) EXPORT CONTROL AUTHORITY.—

6             (1) IN GENERAL.—Unless otherwise reserved to  
7         the President or a department (other than the De-  
8         partment) or agency of the United States, all power,  
9         authority, and discretion conferred by this Act shall  
10        be exercised by the Secretary.

11            (2) DELEGATION OF FUNCTIONS OF THE SEC-  
12        RETARY.—The Secretary may delegate any function  
13        under this Act, unless otherwise provided, to the  
14        Under Secretary of Commerce for Export Adminis-  
15        tration or to any other officer of the Department.

16         (b) UNDER SECRETARY OF COMMERCE; ASSISTANT  
17        SECRETARIES.—

18            (1) UNDER SECRETARY OF COMMERCE.—There  
19        shall be within the Department an Under Secretary  
20        of Commerce for Export Administration (in this sec-  
21        tion referred to as the “Under Secretary”) who shall  
22        be appointed by the President, by and with the ad-  
23        vice and consent of the Senate. The Under Secretary  
24        shall carry out all functions of the Secretary under

1 this Act and other provisions of law relating to na-  
2 tional security, as the Secretary may delegate.

3 (2) ADDITIONAL ASSISTANT SECRETARIES.—In  
4 addition to the number of Assistant Secretaries oth-  
5 erwise authorized for the Department of Commerce,  
6 there shall be within the Department of Commerce  
7 the following Assistant Secretaries of Commerce:

8 (A) An Assistant Secretary for Export Ad-  
9 ministration who shall be appointed by the  
10 President, by and with the advice and consent  
11 of the Senate, and who shall assist the Sec-  
12 retary and the Under Secretary in carrying out  
13 functions relating to export listing and licens-  
14 ing.

15 (B) An Assistant Secretary for Export En-  
16 forcement who shall be appointed by the Presi-  
17 dent, by and with the advice and consent of the  
18 Senate, and who shall assist the Secretary and  
19 the Under Secretary in carrying out functions  
20 relating to export enforcement.

21 (c) ISSUANCE OF REGULATIONS.—

22 (1) IN GENERAL.—The President and the Sec-  
23 retary may issue such regulations as are necessary  
24 to carry out this Act. Any such regulations the pur-  
25 pose of which is to carry out title II or title III may

1 be issued only after the regulations are submitted  
2 for review to such departments or agencies as the  
3 President considers appropriate. The Secretary shall  
4 consult with the appropriate export control advisory  
5 committee appointed under section 105(f) in formu-  
6 lating regulations under this title. The second sen-  
7 tence of this subsection does not require the concur-  
8 rence or approval of any official, department, or  
9 agency to which such regulations are submitted.

10 (2) AMENDMENTS TO REGULATIONS.—If the  
11 Secretary proposes to amend regulations issued  
12 under this Act, the Secretary shall report to the  
13 Committee on Banking, Housing, and Urban Affairs  
14 of the Senate and the Committee on International  
15 Relations of the House of Representatives on the in-  
16 tent and rationale of such amendments. Such report  
17 shall evaluate the cost and burden to the United  
18 States exporters of the proposed amendments in re-  
19 lation to any enhancement of licensing objectives.  
20 The Secretary shall consult with the appropriate ex-  
21 port control advisory committees appointed under  
22 section 105(f) in amending regulations issued under  
23 this Act.

24 **SEC. 702. CONFIDENTIALITY OF INFORMATION.**

25 (a) EXEMPTIONS FROM DISCLOSURE.—

1           (1) INFORMATION OBTAINED ON OR BEFORE  
2       JUNE 30, 1980.—Except as otherwise provided by the  
3       third sentence of section 602(c)(2), information ob-  
4       tained under the Export Administration Act of  
5       1979, or any predecessor statute, on or before June  
6       30, 1980, which is deemed confidential, including  
7       Shipper's Export Declarations, or with respect to  
8       which a request for confidential treatment is made  
9       by the person furnishing such information, shall not  
10      be subject to disclosure under section 552 of title 5,  
11      United States Code, and such information shall not  
12      be published or disclosed, unless the Secretary deter-  
13      mines that the withholding thereof is contrary to the  
14      national interest.

15           (2) INFORMATION OBTAINED AFTER JUNE 30,  
16      1980.—Except as otherwise provided by the third  
17      sentence of section 13(b)(2) of the Export Adminis-  
18      tration Act of 1979, information obtained under this  
19      Act, under the Export Administration Act of 1979  
20      after June 30, 1980, or under the Export Adminis-  
21      tration regulations as maintained and amended  
22      under the authority of the International Emergency  
23      Economic Powers Act (50 U.S.C. 1706), may be  
24      withheld from disclosure only to the extent permitted  
25      by statute, except that information submitted, ob-

1       tained, or considered in connection with an applica-  
2       tion for an export license or other export authoriza-  
3       tion (or recordkeeping or reporting requirement)  
4       under the Export Administration Act of 1979, under  
5       this Act, or under the Export Administration regula-  
6       tions as maintained and amended under the author-  
7       ity of the International Emergency Economic Pow-  
8       ers Act (50 U.S.C. 1706), including—

9               (A) the export license or other export au-  
10              thorization itself,

11             (B) classification requests described in sec-  
12              tion 501(h),

13             (C) information or evidence obtained in the  
14              course of any investigation,

15             (D) information obtained or furnished  
16              under title VII in connection with any inter-  
17              national agreement, treaty, or other obligation,  
18              and

19             (E) information obtained in making the  
20              determinations set forth in section 211 of this  
21              Act,

22       and information obtained in any investigation of an  
23       alleged violation of section 602 of this Act except for  
24       information required to be disclosed by section  
25       602(c)(2) or 606(b)(2) of this Act, shall be withheld

1 from public disclosure and shall not be subject to  
2 disclosure under section 552 of title 5, United States  
3 Code, unless the release of such information is deter-  
4 mined by the Secretary to be in the national inter-  
5 est.

6 (b) INFORMATION TO CONGRESS AND GAO.—

7 (1) IN GENERAL.—Nothing in this title shall be  
8 construed as authorizing the withholding of informa-  
9 tion from Congress or from the General Accounting  
10 Office.

11 (2) AVAILABILITY TO THE CONGRESS—

12 (A) IN GENERAL.—Any information ob-  
13 tained at any time under this title or under any  
14 predecessor Act regarding the control of ex-  
15 ports, including any report or license applica-  
16 tion required under this title, shall be made  
17 available to any committee or subcommittee of  
18 Congress of appropriate jurisdiction upon the  
19 request of the chairman or ranking minority  
20 member of such committee or subcommittee.

21 (B) PROHIBITION ON FURTHER DISCLO-  
22 SURE.—No committee, subcommittee, or Mem-  
23 ber of Congress shall disclose any information  
24 obtained under this Act or any predecessor Act  
25 regarding the control of exports which is sub-

mitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

(3) AVAILABILITY TO THE GAO.—

(A) IN GENERAL.—Notwithstanding subsection (a), information described in paragraph (2) shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

(B) PROHIBITION ON FURTHER DISCLOSURES.—No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a con-

1           fidential basis and from which any individual  
2           can be identified.

3           (c) INFORMATION EXCHANGE.—Notwithstanding  
4 subsection (a), the Secretary and the Commissioner of  
5 Customs shall exchange licensing and enforcement infor-  
6 mation with each other as necessary to facilitate enforce-  
7 ment efforts and effective license decisions.

8           (d) PENALTIES FOR DISCLOSURE OF CONFIDENTIAL  
9 INFORMATION.—

10           (1) DISCLOSURE PROHIBITED.—No officer or  
11 employee of the United States, or any department or  
12 agency thereof, may publish, divulge, disclose, or  
13 make known in any manner or to any extent not au-  
14 thorized by law any information that—

15           (A) the officer or employee obtains in the  
16 course of his or her employment or official du-  
17 ties or by reason of any examination or inves-  
18 tigation made by, or report or record made to  
19 or filed with, such department or agency, or of-  
20 ficer or employee thereof; and

21           (B) is exempt from disclosure under this  
22 section.

23           (2) CRIMINAL PENALTIES.—Any such officer or  
24 employee who knowingly violates paragraph (1) shall  
25 be fined not more than \$50,000, imprisoned not

1 more than 1 year, or both, for each violation of  
2 paragraph (1). Any such officer or employee may  
3 also be removed from office or employment.

4 (3) CIVIL PENALTIES; ADMINISTRATIVE SANC-  
5 TIONS.—The Secretary may impose a civil penalty of  
6 not more than \$5,000 for each violation of para-  
7 graph (1). Any officer or employee who commits  
8 such violation may also be removed from office or  
9 employment for the violation of paragraph (1). Sub-  
10 sections 603 (e), (g), (h), and (i) and 606 (a), (b),  
11 and (c) shall apply to violations described in this  
12 paragraph.

## 13 **TITLE VIII—MISCELLANEOUS** 14 **PROVISIONS**

### 15 **SEC. 801. ANNUAL AND PERIODIC REPORTS.**

16 (a) ANNUAL REPORT.—Not later than February 1 of  
17 each year, the Secretary shall submit to Congress a report  
18 on the administration of this Act during the fiscal year  
19 ending September 30 of the preceding calendar year. All  
20 Federal agencies shall cooperate fully with the Secretary  
21 in providing information for each such report.

22 (b) REPORT ELEMENTS.—Each such report shall in-  
23 clude in detail—

24 (1) a description of the implementation of the  
25 export control policies established by this Act, in-

1 including any delegations of authority by the President  
2 and any other changes in the exercise of delegated  
3 authority;

4 (2) a description of the changes to and the  
5 year-end status of country tiering and the Control  
6 List;

7 (3) a description of the determinations made  
8 with respect to foreign availability and mass-market  
9 status, the set-asides of foreign availability and  
10 mass-market status determinations, and negotiations  
11 to eliminate foreign availability;

12 (4) a description of the regulations issued under  
13 this Act;

14 (5) a description of organizational and proce-  
15 dural changes undertaken in furtherance of this Act;

16 (6) a description of the enforcement activities,  
17 violations, and sanctions imposed under section 604;

18 (7) a statistical summary of all applications and  
19 notifications, including—

20 (A) the number of applications and notifi-  
21 cations pending review at the beginning of the  
22 fiscal year;

23 (B) the number of notifications returned  
24 and subject to full license procedure;

1 (C) the number of notifications with no ac-  
2 tion required;

3 (D) the number of applications that were  
4 approved, denied, or withdrawn, and the num-  
5 ber of applications where final action was  
6 taken; and

7 (E) the number of applications and notifi-  
8 cations pending review at the end of the fiscal  
9 year;

10 (8) summary of export license data by export  
11 identification code and dollar value by country;

12 (9) an identification of processing time by—

13 (A) overall average, and

14 (B) top 25 export identification codes;

15 (10) an assessment of the effectiveness of mul-  
16 tilateral regimes, and a description of negotiations  
17 regarding export controls;

18 (11) a description of the significant differences  
19 between the export control requirements of the  
20 United States and those of other multilateral control  
21 regime members, the specific differences between  
22 United States requirements and those of other sig-  
23 nificant supplier countries, and a description of the  
24 extent to which the executive branch intends to ad-  
25 dress the differences;

1           (12) an assessment of the costs of export con-  
2       trols;

3           (13) a description of the progress made toward  
4       achieving the goals established for the Department  
5       dealing with export controls under the Government  
6       Performance Results Act; and

7           (14) any other reports required by this Act to  
8       be submitted to the Committee on Banking, Hous-  
9       ing, and Urban Affairs of the Senate and the Com-  
10      mittee on International Relations of the House of  
11      Representatives.

12       (c) CONGRESSIONAL NOTIFICATION.—Whenever the  
13      Secretary determines, in consultation with other appro-  
14      priate departments and agencies, that a significant viola-  
15      tion of this Act poses a direct and imminent threat to  
16      United States national security interests, the Secretary,  
17      in consultation with other appropriate departments and  
18      agencies, shall advise the Committee on Banking, Hous-  
19      ing, and Urban Affairs of the Senate and the Committee  
20      on International Relations of the House of Representa-  
21      tives of such violation consistent with the protection of law  
22      enforcement sources, methods, and activities.

23       (d) FEDERAL REGISTER PUBLICATION REQUIRE-  
24      MENTS.—Whenever information under this Act is required  
25      to be published in the Federal Register, such information

1 shall, in addition, be made available on the appropriate  
2 Internet website of the Department.

3 **SEC. 802. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) REPEAL.—The Export Administration Act of  
5 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

6 (b) ENERGY POLICY AND CONSERVATION ACT.—(1)  
7 Section 103 of the Energy Policy and Conservation Act  
8 (42 U.S.C. 6212) is repealed.

9 (2) Section 251(d) of the Energy Policy and Con-  
10 servation Act (42 U.S.C. 6271(d)) is repealed.

11 (c) ALASKA NATURAL GAS TRANSPORTATION ACT.—  
12 Section 12 of the Alaska Natural Gas Transportation Act  
13 of 1976 (15 U.S.C. 719j) is repealed.

14 (d) MINERAL LEASING ACT.—Section 28(u) of the  
15 Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

16 (e) EXPORTS OF ALASKAN NORTH SLOPE OIL.—Sec-  
17 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))  
18 is repealed.

19 (f) DISPOSITION OF CERTAIN NAVAL PETROLEUM  
20 RESERVE PRODUCTS.—Section 7430(e) of title 10, United  
21 States Code, is repealed.

22 (g) OUTER CONTINENTAL SHELF LANDS ACT.—Sec-  
23 tion 28 of the Outer Continental Shelf Lands Act (43  
24 U.S.C. 1354) is repealed.

1 (h) FOREST RESOURCES CONSERVATION AND  
 2 SHORTAGE ACT.—Section 491 of the Forest Resource  
 3 Conservation and Shortage Relief Act of 1990 (16 U.S.C.  
 4 620c) is repealed.

5 (i) ARMS EXPORT CONTROL ACT.—

6 (1) Section 38 of the Arms Export Control Act  
 7 (22 U.S.C. 2778) is amended—

8 (A) in subsection (e)—

9 (i) in the first sentence, by striking  
 10 “subsections (c)” and all that follows  
 11 through “12 of such Act,” and inserting  
 12 “subsections (b), (c), (d) and (e) of section  
 13 603 of the Export Administration Act of  
 14 1999, by subsections (a) and (b) of section  
 15 607 of such Act, and by section 702 of  
 16 such Act,”; and

17 (ii) in the third sentence, by striking  
 18 “11(c) of the Export Administration Act of  
 19 1979” and inserting “603(c) of the Export  
 20 Administration Act of 1999”; and

21 (B) in subsection (g)(1)(A)(ii), by inserting  
 22 “or section 603 of the Export Administration  
 23 Act of 1999” after “1979”.

24 (2) Section 39A(c) of the Arms Export Control  
 25 Act is amended—

1 (A) by striking “subsections (c),” and all  
 2 that follows through “12(a) of such Act” and  
 3 inserting “subsections (c), (d), and (e) of sec-  
 4 tion 603, section 608(c), and subsections (a)  
 5 and (b) of section 607, of the Export Adminis-  
 6 tration Act of 1999”; and

7 (B) by striking “11(c)” and inserting  
 8 “603(c)”.

9 (3) Section 40(k) of the Arms Export Control  
 10 Act (22 U.S.C. 2780(k)) is amended—

11 (A) by striking “11(c), 11(e), 11(g), and  
 12 12(a) of the Export Administration Act of  
 13 1979” and inserting “603(b), 603(c), 603(e),  
 14 607(a), and 607(b) of the Export Administra-  
 15 tion Act of 1999”; and

16 (B) by striking “11(c)” and inserting  
 17 “603(c)”.

18 (j) OTHER PROVISIONS OF LAW.—

19 (1) Section 5(b)(4) of the Trading with the  
 20 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by  
 21 striking “section 5 of the Export Administration Act  
 22 of 1979, or under section 6 of that Act to the extent  
 23 that such controls promote the nonproliferation or  
 24 antiterrorism policies of the United States” and in-

1       serting “titles II and III of the Export Administra-  
2       tion Act of 1999”.

3               (2) Section 502B(a)(2) of the Foreign Assist-  
4       ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-  
5       ed in the second sentence—

6                       (A) by striking “Export Administration  
7       Act of 1979” the first place it appears and in-  
8       serting “Export Administration Act of 1999”;  
9       and

10                      (B) by striking “Act of 1979)” and insert-  
11       ing “Act of 1999)”.

12               (3) Section 140(a) of the Foreign Relations Au-  
13       thorization Act, Fiscal Years 1988 and 1989 (22  
14       U.S.C. 2656f(a)) is amended—

15                      (A) in paragraph (1)(B), by inserting “or  
16       section 310 of the Export Administration Act of  
17       1999” after “Act of 1979”; and

18                      (B) in paragraph (2), by inserting “or 310  
19       of the Export Administration Act of 1999”  
20       after “6(j) of the Export Administration Act of  
21       1979”.

22               (4) Section 40(e)(1) of the State Department  
23       Basic Authorities Act of 1956 (22 U.S.C.  
24       2712(e)(1)) is amended by striking “section 6(j)(1)  
25       of the Export Administration Act of 1979” and in-

1       serting “section 310 of the Export Administration  
2       Act of 1999”.

3           (5) Section 205(d)(4)(B) of the State Depart-  
4       ment Basic Authorities Act of 1956 (22 U.S.C.  
5       4305(d)(4)(B)) is amended by striking “section 6(j)  
6       of the Export Administration Act of 1979” and in-  
7       serting “section 310 of the Export Administration  
8       Act of 1999”.

9           (6) Section 110 of the International Security  
10      and Development Cooperation Act of 1980 (22  
11      U.S.C. 2778a) is amended by striking “Act of  
12      1979” and inserting “Act of 1999”.

13          (7) Section 203(b)(3) of the International  
14      Emergency Economic Powers Act (50 U.S.C.  
15      1702(b)(3)) is amended by striking “section 5 of the  
16      Export Administration Act of 1979, or under section  
17      6 of such Act to the extent that such controls pro-  
18      mote the nonproliferation or antiterrorism policies of  
19      the United States” and inserting “the Export Ad-  
20      ministration Act of 1999”.

21          (8) Section 1605(a)(7)(A) of title 28, United  
22      States Code, is amended by striking “section 6(j) of  
23      the Export Administration Act of 1979 (50 U.S.C.  
24      App. 2405(j))” and inserting “section 310 of the  
25      Export Administration Act of 1999”.

1           (9) Section 2332d(a) of title 18, United States  
 2       Code, is amended by striking “section 6(j) of the  
 3       Export Administration Act of 1979 (50 U.S.C. App.  
 4       2405)” and inserting “section 310 of the Export Ad-  
 5       ministration Act of 1999”.

6           (10) Section 620H(a)(1) of the Foreign Assist-  
 7       ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amend-  
 8       ed by striking “section 6(j) of the Export Adminis-  
 9       tration Act of 1979 (50 U.S.C. App. 2405(j))” and  
 10      inserting “section 310 of the Export Administration  
 11      Act of 1999”.

12          (11) Section 1621(a) of the International Fi-  
 13      nancial Institutions Act (22 U.S.C. 262p–4q(a)) is  
 14      amended by striking “section 6(j) of the Export Ad-  
 15      ministration Act of 1979 (50 U.S.C. App. 2405(j))”  
 16      and inserting “section 310 of the Export Adminis-  
 17      tration Act of 1999”.

18          (12) Section 1956(c)(7)(D) of title 18, United  
 19      States Code, is amended by striking “section 11 (re-  
 20      lating to violations) of the Export Administration of  
 21      1979” and inserting “section 603 (relating to pen-  
 22      alties) of the Export Administration Act of 1999”.

23 **SEC. 803. SAVINGS PROVISIONS.**

24          (a) IN GENERAL.—All delegations, rules, regulations,  
 25      orders, determinations, licenses, or other forms of admin-

1 istrative action which have been made, issued, conducted,  
 2 or allowed to become effective under—

3 (1) the Export Control Act of 1949, the Export  
 4 Administration Act of 1969, the Export Administra-  
 5 tion Act of 1979, or the International Emergency  
 6 Economic Powers Act when invoked to maintain and  
 7 continue the Export Administration regulations, or

8 (2) those provisions of the Arms Export Control  
 9 Act which are amended by section 802,

10 and are in effect on the date of enactment of this Act,  
 11 shall continue in effect according to their terms until  
 12 modified, superseded, set aside, or revoked under this Act  
 13 or the Arms Export Control Act.

14 (b) ADMINISTRATIVE AND JUDICIAL PRO-  
 15 CEEDINGS.—

16 (1) EXPORT ADMINISTRATION ACT.—This Act  
 17 shall not affect any administrative or judicial pro-  
 18 ceedings commenced or any application for a license  
 19 made, under the Export Administration Act of 1979  
 20 or pursuant to Executive Order 12924, which is  
 21 pending at the time this Act takes effect. Any such  
 22 proceedings, and any action on such application,  
 23 shall continue under the Export Administration Act  
 24 of 1979 as if that Act had not been repealed.

1           (2) OTHER PROVISIONS OF LAW.—This Act  
2       shall not affect any administrative or judicial pro-  
3       ceeding commenced or any application for a license  
4       made, under those provisions of the Arms Export  
5       Control Act which are amended by section 802, if  
6       such proceeding or application is pending at the time  
7       this Act takes effect. Any such proceeding, and any  
8       action on such application, shall continue under  
9       those provisions as if those provisions had not been  
10      amended by section 802.

11      (c) TREATMENT OF CERTAIN DETERMINATIONS.—  
12   Any determination with respect to the government of a  
13   foreign country under section 6(j) of the Export Adminis-  
14   tration Act of 1979, or Executive Order 12924, that is  
15   in effect on the day before the date of enactment of this  
16   Act, shall, for purposes of this title or any other provision  
17   of law, be deemed to be made under section 310 of this  
18   Act until superseded by a determination under such sec-  
19   tion 310.

20      (d) IMPLEMENTATION.—The Secretary shall make  
21   any revisions to the Export Administration regulations re-  
22   quired by this Act no later than 180 days after the date  
23   of enactment of this Act.